

**ELECTRONIC CIGARETTE AND OTHER NICOTINE
PRODUCT TAX AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies tax provisions in the Electronic Cigarette and Nicotine Product Taxation and Licensing Act.

Highlighted Provisions:

This bill:

- ▶ separates electronic cigarette products and nontherapeutic nicotine products from alternative nicotine products with regard to licensing and taxation requirements;
- ▶ creates the Electronic Cigarette and Nontherapeutic Nicotine Product Licensing and Taxation Act;
- ▶ defines "retail price";
- ▶ imposes a tax on the retail price rather than the manufacturer's sale price of electronic cigarettes and nontherapeutic nicotine products;
- ▶ requires the retailer to pay the tax on an electronic cigarette product or a nontherapeutic nicotine product;
- ▶ adjusts the rate of the tax;
- ▶ provides for distribution of tax revenue for electronic cigarette products, nontherapeutic nicotine products, and alternative nicotine products; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

- 33 **10-8-41.6**, as last amended by Laws of Utah 2022, Chapter 255
- 34 **17-50-333**, as last amended by Laws of Utah 2022, Chapter 255
- 35 **26-62-102**, as last amended by Laws of Utah 2020, Chapters 302, 347
- 36 **26-62-206**, as enacted by Laws of Utah 2020, Chapter 347
- 37 **59-14-801**, as last amended by Laws of Utah 2020, Chapter 347
- 38 **59-14-802**, as last amended by Laws of Utah 2020, Chapter 347
- 39 **59-14-803**, as last amended by Laws of Utah 2020, Chapter 347
- 40 **59-14-804**, as enacted by Laws of Utah 2020, Chapter 347
- 41 **59-14-805**, as enacted by Laws of Utah 2020, Chapter 347
- 42 **59-14-806**, as enacted by Laws of Utah 2020, Chapter 347
- 43 **59-14-807**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
- 44 **59-14-808**, as enacted by Laws of Utah 2020, Chapter 347
- 45 **63I-1-259**, as last amended by Laws of Utah 2022, Chapter 218

46 ENACTS:

- 47 **59-14-901**, Utah Code Annotated 1953
- 48 **59-14-902**, Utah Code Annotated 1953
- 49 **59-14-903**, Utah Code Annotated 1953
- 50 **59-14-904**, Utah Code Annotated 1953
- 51 **59-14-905**, Utah Code Annotated 1953
- 52 **59-14-906**, Utah Code Annotated 1953
- 53 **59-14-907**, Utah Code Annotated 1953
- 54 **59-14-908**, Utah Code Annotated 1953
- 55 **59-14-909**, Utah Code Annotated 1953

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

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

59 **10-8-41.6. Regulation of retail tobacco specialty business.**

60 (1) As used in this section:

61 (a) "Community location" means:

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

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

64 (iii) a trade or technical school;

65 (iv) a church;

66 (v) a public library;

67 (vi) a public playground;

68 (vii) a public park;

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

70 (ix) a public recreational facility;

71 (x) a public arcade; or

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

73 (b) "Department" means the Department of Health and Human Services created in

74 Section [26B-1-201](#).

75 (c) "Electronic cigarette product" means the same as that term is defined in Section
76 [76-10-101](#).

77 (d) "Flavored electronic cigarette product" means the same as that term is defined in
78 Section [76-10-101](#).

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

81 (f) "Local health department" means the same as that term is defined in Section
82 [26A-1-102](#).

83 (g) "Nicotine product" means the same as that term is defined in Section [76-10-101](#).

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

85 (i) sales of tobacco products, electronic cigarette products, and nicotine products
86 account for more than 35% of the total quarterly gross receipts for the establishment;

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

89 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of

90 tobacco products, electronic cigarette products, or nicotine products;

91 (iv) the commercial establishment:

92 (A) holds itself out as a retail tobacco specialty business; and

93 (B) causes a reasonable person to believe the commercial establishment is a retail

94 tobacco specialty business;

95 (v) any flavored electronic cigarette product is sold; or

96 (vi) the retail space features a self-service display for tobacco products, electronic
97 cigarette products, or nicotine products.

98 (i) "Self-service display" means the same as that term is defined in Section

99 [76-10-105.1](#).

100 (j) "Tobacco product" means:

101 (i) a tobacco product as defined in Section [76-10-101](#); or

102 (ii) tobacco paraphernalia as defined in Section [76-10-101](#).

103 (2) The regulation of a retail tobacco specialty business is an exercise of the police
104 powers of the state by the state or by delegation of the state's police powers to other
105 governmental entities.

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

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

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

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

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

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

117 (A) agriculture use; or

118 (B) residential use.

119 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
120 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

121 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
122 to intervening structures or zoning districts.

123 (5) A municipality may not issue or renew a license for a person to conduct business as
124 a retail tobacco specialty business until the person provides the municipality with proof that the
125 retail tobacco specialty business has:

126 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
127 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health
128 department having jurisdiction over the area in which the retail tobacco specialty business is
129 located; and

130 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
131 Commission in accordance with Section [59-14-201](#) or [59-14-301](#) to sell a tobacco product; and

132 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
133 license issued by the State Tax Commission in accordance with Section [59-14-803](#) or
134 [59-14-902](#) to sell an electronic cigarette product or a nicotine product.

135 (6) (a) Nothing in this section:

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

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

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

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

144 (ii) if a licensee violates federal law or federal regulations restricting the sale and
145 distribution of tobacco products or electronic cigarette products to protect children and
146 adolescents;

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

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

150 (7) (a) A retail tobacco specialty business is exempt from Subsection (4) if:

151 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a

152 license to conduct business as a retail tobacco specialty business;

153 (ii) the retail tobacco specialty business is operating in a municipality in accordance
154 with all applicable laws except for the requirement in Subsection (4); and

155 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
156 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

159 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
160 or permanent revocation;

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

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

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

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

169 (B) zoning ordinances;

170 (C) building codes; and

171 (D) the requirements of the license described in Subsection (7)(a)(i).

172 (c) A retail tobacco specialty business that does not qualify for an exemption under
173 Subsection (7)(a) is exempt from Subsection (4) if:

174 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
175 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
176 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
177 health department having jurisdiction over the area in which the retail tobacco specialty
178 business is located;

179 (ii) the retail tobacco specialty business is operating in the municipality in accordance
180 with all applicable laws except for the requirement in Subsection (4); and

181 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
182 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

183 (d) Except as provided in Subsection (7)(e), a retail tobacco specialty business may
184 maintain an exemption under Subsection (7)(c) if:

185 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
186 retail tobacco specialty business permit from the local health department having jurisdiction
187 over the area in which the retail tobacco specialty business is located;

188 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
189 or permanent revocation;

190 (iii) the retail tobacco specialty business does not close for business or otherwise
191 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
192 more than 60 consecutive days;

193 (iv) the retail tobacco specialty business does not substantially change the business
194 premises or business operation as the business existed when the retail tobacco specialty
195 business received a permit under Subsection (7)(d)(i); and

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

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

199 (B) zoning ordinances;

200 (C) building codes; and

201 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

202 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
203 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
204 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
205 specialty business:

206 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
207 and located within a group of architecturally unified commercial establishments built on a site
208 that is planned, developed, owned, and managed as an operating unit; and

209 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
210 directly related to the relocation described in this Subsection (7)(e).

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

212 **17-50-333. Regulation of retail tobacco specialty business.**

213 (1) As used in this section:

- 214 (a) "Community location" means:
- 215 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 216 (ii) a licensed child-care facility or preschool;
- 217 (iii) a trade or technical school;
- 218 (iv) a church;
- 219 (v) a public library;
- 220 (vi) a public playground;
- 221 (vii) a public park;
- 222 (viii) a youth center or other space used primarily for youth oriented activities;
- 223 (ix) a public recreational facility;
- 224 (x) a public arcade; or
- 225 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 226 (b) "Department" means the Department of Health and Human Services created in
- 227 Section [26B-1-201](#).
- 228 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 229 [76-10-101](#).
- 230 (d) "Flavored electronic cigarette product" means the same as that term is defined in
- 231 Section [76-10-101](#).
- 232 (e) "Licensee" means a person licensed under this section to conduct business as a
- 233 retail tobacco specialty business.
- 234 (f) "Local health department" means the same as that term is defined in Section
- 235 [26A-1-102](#).
- 236 (g) "Nicotine product" means the same as that term is defined in Section [76-10-101](#).
- 237 (h) "Retail tobacco specialty business" means a commercial establishment in which:
- 238 (i) sales of tobacco products, electronic cigarette products, and nicotine products
- 239 account for more than 35% of the total quarterly gross receipts for the establishment;
- 240 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 241 storage of tobacco products, electronic cigarette products, or nicotine products;
- 242 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 243 tobacco products, electronic cigarette products, or nicotine products;
- 244 (iv) the commercial establishment:

245 (A) holds itself out as a retail tobacco specialty business; and
246 (B) causes a reasonable person to believe the commercial establishment is a retail
247 tobacco specialty business;
248 (v) any flavored electronic cigarette product is sold; or
249 (vi) the retail space features a self-service display for tobacco products, electronic
250 cigarette products, or nicotine products.
251 (i) "Self-service display" means the same as that term is defined in Section
252 76-10-105.1.
253 (j) "Tobacco product" means:
254 (i) the same as that term is defined in Section 76-10-101; or
255 (ii) tobacco paraphernalia as defined in Section 76-10-101.
256 (2) The regulation of a retail tobacco specialty business is an exercise of the police
257 powers of the state by the state or by the delegation of the state's police power to other
258 governmental entities.
259 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
260 the person obtains a license from the county in which the retail tobacco specialty business is
261 located.
262 (b) A county may only issue a retail tobacco specialty business license to a person if
263 the person complies with the provisions of Subsections (4) and (5).
264 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a
265 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
266 business is located within:
267 (i) 1,000 feet of a community location;
268 (ii) 600 feet of another retail tobacco specialty business; or
269 (iii) 600 feet from property used or zoned for:
270 (A) agriculture use; or
271 (B) residential use.
272 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
273 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
274 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
275 to intervening structures or zoning districts.

276 (5) A county may not issue or renew a license for a person to conduct business as a
277 retail tobacco specialty business until the person provides the county with proof that the retail
278 tobacco specialty business has:

279 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
280 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health
281 department having jurisdiction over the area in which the retail tobacco specialty business is
282 located; and

283 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
284 Commission in accordance with Section [59-14-201](#) or [59-14-301](#) to sell a tobacco product; or

285 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
286 license issued by the State Tax Commission in accordance with Section [59-14-803](#) or
287 [59-14-902](#) to sell an electronic cigarette product or a nicotine product.

288 (6) (a) Nothing in this section:

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

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

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

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

296 (ii) if a licensee violates federal law or federal regulations restricting the sale and
297 distribution of tobacco products or electronic cigarette products to protect children and
298 adolescents;

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

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

302 (7) (a) Except as provided in Subsection (7)(e), a retail tobacco specialty business is
303 exempt from Subsection (4) if:

304 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
305 license to conduct business as a retail tobacco specialty business;

306 (ii) the retail tobacco specialty business is operating in a county in accordance with all

307 applicable laws except for the requirement in Subsection (4); and
308 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
309 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
310 (b) A retail tobacco specialty business may maintain an exemption under Subsection
311 (7)(a) if:
312 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
313 or permanent revocation;
314 (ii) the retail tobacco specialty business does not close for business or otherwise
315 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
316 more than 60 consecutive days;
317 (iii) the retail tobacco specialty business does not substantially change the business
318 premises or business operation; and
319 (iv) the retail tobacco specialty business maintains the right to operate under the terms
320 of other applicable laws, including:
321 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
322 (B) zoning ordinances;
323 (C) building codes; and
324 (D) the requirements of the license described in Subsection (7)(a)(i).
325 (c) A retail tobacco specialty business that does not qualify for an exemption under
326 Subsection (7)(a) is exempt from Subsection (4) if:
327 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
328 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
329 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
330 health department having jurisdiction over the area in which the retail tobacco specialty
331 business is located;
332 (ii) the retail tobacco specialty business is operating in the county in accordance with
333 all applicable laws except for the requirement in Subsection (4); and
334 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
335 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
336 (d) A retail tobacco specialty business may maintain an exemption under Subsection
337 (7)(c) if:

338 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
339 retail tobacco specialty business permit from the local health department having jurisdiction
340 over the area in which the retail tobacco specialty business is located;

341 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
342 or permanent revocation;

343 (iii) the retail tobacco specialty business does not close for business or otherwise
344 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
345 more than 60 consecutive days;

346 (iv) the retail tobacco specialty business does not substantially change the business
347 premises or business operation as the business existed when the retail tobacco specialty
348 business received a permit under Subsection (7)(d)(i); and

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

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

352 (B) zoning ordinances;

353 (C) building codes; and

354 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

355 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
356 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
357 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
358 specialty business:

359 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
360 and located within a group of architecturally unified commercial establishments built on a site
361 that is planned, developed, owned, and managed as an operating unit; and

362 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
363 directly related to the relocation described in this Subsection (7)(e).

364 Section 3. Section **26-62-102** is amended to read:

365 **26-62-102. Definitions.**

366 As used in this chapter:

367 (1) "Community location" means the same as that term is defined:

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

- 369 (b) as it relates to a county, in Section 17-50-333.
- 370 (2) "Electronic cigarette product" means the same as that term is defined in Section
- 371 76-10-101.
- 372 (3) "Employee" means an employee of a tobacco retailer.
- 373 (4) "Enforcing agency" means the state Department of Health, or any local health
- 374 department enforcing the provisions of this chapter.
- 375 (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
- 376 specialty business.
- 377 (6) "Local health department" means the same as that term is defined in Section
- 378 26A-1-102.
- 379 (7) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 380 (8) "Owner" means a person holding a 20% ownership interest in the business that is
- 381 required to obtain a permit under this chapter.
- 382 (9) "Permit" means a tobacco retail permit issued under this chapter.
- 383 (10) (a) "Proof of age" means:
- 384 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
- 385 Card Act;
- 386 (ii) a valid identification that:
- 387 (A) is substantially similar to an identification card issued under Title 53, Chapter 3,
- 388 Part 8, Identification Card Act;
- 389 (B) is issued in accordance with the laws of a state other than Utah in which the
- 390 identification is issued;
- 391 (C) includes date of birth; and
- 392 (D) has a picture affixed;
- 393 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
- 394 Driver License Act, or in accordance with the laws of the state in which the valid driver license
- 395 is issued;
- 396 (iv) a valid United States military identification card that:
- 397 (A) includes date of birth; and
- 398 (B) has a picture affixed; or
- 399 (v) a valid passport.

400 (b) "Proof of age" does not include a valid driving privilege card issued in accordance
401 with Section 53-3-207.

402 (11) "Retail tobacco specialty business" means the same as that term is defined:

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

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

405 (12) "Tax commission license" means a license issued by the State Tax Commission
406 under:

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

408 (b) Section 59-14-301 to sell a tobacco product at retail; [or]

409 (c) Section 59-14-803 to sell an [~~electronic cigarette product or a~~] alternative nicotine
410 product[-]; or

411 (d) Section 59-14-902 to sell an electronic cigarette product or a nontherapeutic
412 nicotine product.

413 (13) "Tobacco product" means:

414 (a) a tobacco product as defined in Section 76-10-101; or

415 (b) tobacco paraphernalia as defined in Section 76-10-101.

416 (14) "Tobacco retailer" means a person that is required to obtain a tax commission
417 license.

418 Section 4. Section 26-62-206 is amended to read:

419 **26-62-206. Requirements for the sale of tobacco product, electronic cigarette**
420 **product, or nicotine product.**

421 (1) A tobacco retailer shall:

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

424 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine
425 product;

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

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

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

431 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine
432 product;

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

435 (iii) the date and time of the sale.

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

437 (a) maintained for at least one year after the date of each transaction in the itemized
438 transaction log;

439 (b) made available to an enforcing agency or a peace officer at the request of the
440 enforcing agency or the peace officer; and

441 (c) in addition to any documentation required under Section 59-1-1406 [and],
442 Subsection 59-14-805(2), and Subsection 59-14-907(4).

443 Section 5. Section 59-14-801 is amended to read:

444 **Part 8. Alternative Nicotine Product Licensing and Taxation Act**

445 **59-14-801. Title.**

446 This part is known as the [~~"Electronic Cigarette Product and~~] "Alternative Nicotine
447 Product Licensing and Taxation Act."

448 Section 6. Section 59-14-802 is amended to read:

449 **59-14-802. Definitions.**

450 As used in this part:

451 (1) "Licensee" means a person that holds a valid license to sell an [~~electronic cigarette~~
452 ~~product or a~~] alternative nicotine product.

453 (2) (a) "Manufacturer's sales price" means the amount that the manufacturer [~~of an~~
454 ~~electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a~~
455 ~~nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device]~~ charges
456 after subtracting a discount.

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

459 (i) whether the [~~electronic cigarette substance, prefilled electronic cigarette, alternative~~
460 ~~nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine~~
461 ~~device]~~ packaged product is shipped f.o.b. origin or f.o.b. destination; or

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

463 Section 7. Section **59-14-803** is amended to read:

464 **59-14-803. License to sell an alternative nicotine product.**

465 (1) A person may not sell, offer to sell, or distribute an [~~electronic cigarette product or~~
466 a] alternative nicotine product in this state without first:

467 (a) except as provided in Subsection (2), obtaining a license from the commission
468 under this section to sell an [~~electronic cigarette product or a~~] alternative nicotine product; and

469 (b) complying with any bonding requirement described in Subsection (5).

470 (2) A person that holds a valid license to sell cigarettes under Section **59-14-201** or a
471 person that holds a valid license to sell tobacco products under Section **59-14-301** may, without
472 obtaining a separate license in accordance with this section, sell, offer to sell, or distribute an
473 [~~electronic cigarette product or a~~] alternative nicotine product in this state.

474 (3) The commission shall issue a license to sell an [~~electronic cigarette product or a~~]
475 alternative nicotine product to a person that submits an application, on a form created by the
476 commission, that includes:

477 (a) the person's name;

478 (b) the address of the facility where the person will sell an [~~electronic cigarette product~~
479 or a] alternative nicotine product; and

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

481 (4) A license described in Subsection (3) is:

482 (a) valid only at one fixed business address;

483 (b) valid for three years;

484 (c) valid only for a physical location; and

485 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

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

490 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
491 required by Subsection (5)(a) in combination with any bond required by Section **59-14-201** or
492 **59-14-301**.

493 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount
494 of the bond.

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

496 (i) except as provided in Subsection (5)(d)(ii) or (iii), \$500;

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

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

503 (6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
504 Administrative Rulemaking Act, to establish the additional information described in
505 Subsection (3)(c) that a person shall provide in the application described in Subsection (3).

506 (7) It is a class B misdemeanor for a person to violate Subsection (1).

507 (8) The commission may not charge a fee for a license under this section.

508 Section 8. Section 59-14-804 is amended to read:

509 **59-14-804. Taxation of alternative nicotine product.**

510 [~~(1)(a) Beginning on July 1, 2020, a tax is imposed upon the following:~~]

511 [~~(i) an electronic cigarette substance; and]~~

512 [~~(ii) a prefilled electronic cigarette.]~~

513 [~~(b) Beginning on July 1, 2021, a tax is imposed upon the following:~~]

514 [~~(i) a nontherapeutic nicotine device substance; and]~~

515 [~~(ii) a prefilled nontherapeutic nicotine device.]~~

516 [~~(c) Beginning on July 1, 2021, a]~~

517 (1) A tax is imposed upon an alternative nicotine product.

518 [~~(2)(a) The amount of tax imposed under Subsections (1)(a) and (b) is .56 multiplied~~
519 ~~by the manufacturer's sales price.]~~

520 [~~(b)(i)~~] (2) (a) The tax under Subsection [~~(1)(c)~~] (1) on an alternative nicotine product
521 is imposed:

522 [~~(A)~~] (i) at a rate of \$1.83 per ounce; and

523 [~~(B)~~] (ii) on the basis of the net weight of the alternative nicotine product as listed by

524 the manufacturer.

525 ~~[(ii)]~~ (b) If the net weight of the alternative nicotine product is in a quantity that is a
526 fractional part of one ounce, a proportionate amount of the tax described in Subsection
527 ~~[(2)(b)(i)(A)]~~ (2)(a)(i) is imposed:

528 ~~[(A)]~~ (i) on that fractional part of one ounce; and

529 ~~[(B)]~~ (ii) in accordance with rules made by the commission in accordance with Title
530 63G, Chapter 3, Utah Administrative Rulemaking Act.

531 (3) If a product is sold in the same package as a product that is taxed under Subsection
532 (1), the tax described in Subsection (2) shall apply to the ~~[wholesale]~~ manufacturer's sale price
533 of the entire packaged product.

534 (4) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
535 pay the tax levied under Subsection (1) at the time that ~~[an electronic cigarette substance, a~~
536 ~~prefilled electronic cigarette,]~~ an alternative nicotine product~~[, a nontherapeutic nicotine device~~
537 ~~substance, or a prefilled nontherapeutic nicotine device]~~ is first received in the state.

538 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
539 resell ~~[an electronic cigarette substance, a prefilled electronic cigarette,]~~ an alternative nicotine
540 product~~[, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine~~
541 ~~device]~~ to another distributor, another retailer, or a consumer before paying the tax levied under
542 Subsection (1).

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

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

548 Section 9. Section **59-14-805** is amended to read:

549 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing**
550 **requirement-- Exception -- Penalty -- Overpayment.**

551 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
552 that collects the tax imposed on ~~[an electronic cigarette substance, a prefilled electronic~~
553 ~~cigarette,]~~ an alternative nicotine product~~[, a nontherapeutic nicotine device substance, or a~~
554 ~~prefilled nontherapeutic nicotine device]~~ shall remit to the commission, in an electronic format

555 approved by the commission:

556 (i) the tax collected in the previous calendar quarter; and

557 (ii) the quarterly tax return.

558 (b) The tax collected and the return are due on or before the last day of April, July,

559 October, and January.

560 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person

561 selling [~~an electronic cigarette substance, a prefilled electronic cigarette,~~] an alternative

562 nicotine product[~~, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic~~

563 ~~nicotine device~~] to a person other than the ultimate consumer shall furnish the purchaser with

564 an itemized invoice showing:

565 (i) the seller's name and address;

566 (ii) the name and address of the purchaser;

567 (iii) the date of sale;

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

569 (v) the discount, if any.

570 (b) The invoice shall show whether the price includes the tax.

571 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice

572 available for inspection at the request of the commission or the commission's agent for a period

573 of three years following the sale.

574 (3) (a) A consumer that purchases an untaxed [~~electronic cigarette substance, prefilled~~

575 ~~electronic cigarette,~~] alternative nicotine product[~~, nontherapeutic nicotine device substance, or~~

576 ~~prefilled nontherapeutic nicotine device~~] for use or other consumption shall:

577 (i) file with the commission, on forms prescribed by the commission, a statement

578 showing the quantity and description of the item subject to tax under this part; and

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

580 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax

581 due on or before the last day of the month immediately following the month during which the

582 consumer purchased an untaxed [~~electronic cigarette substance, prefilled electronic cigarette,~~

583 ~~alternative nicotine [device substance, nontherapeutic nicotine product, or prefilled~~

584 ~~nontherapeutic nicotine device~~] product.

585 (c) A consumer shall maintain records necessary to determine the amount of tax the

586 consumer is liable to pay under this part for a period of three years following the date on which
587 the statement required by this section was filed.

588 (4) A tourist who imports an untaxed [~~electronic cigarette substance, a prefilled~~
589 ~~electronic cigarette, an~~] alternative nicotine product[~~, a nontherapeutic nicotine device~~
590 ~~substance, or a prefilled nontherapeutic nicotine device~~] into the state does not need to file the
591 statement described in Subsection (3) or pay the tax if the item is for the tourist's own use or
592 consumption while in this state.

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

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

597 (b) pay the tax on time; or

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

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

601 Section 10. Section 59-14-806 is amended to read:

602 **59-14-806. Refund of taxes paid -- Exemption for exported alternative nicotine**
603 **products.**

604 (1) When [~~an electronic cigarette substance, a prefilled electronic cigarette,]~~ an
605 alternative nicotine product[~~, a nontherapeutic nicotine device substance, or a prefilled~~
606 ~~nontherapeutic nicotine device~~] taxed under this chapter is sold and shipped to a regular dealer
607 in those articles in another state, the seller in this state shall be entitled to a refund of the actual
608 amount of the taxes paid, upon condition that the seller in this state:

609 (a) is a licensed dealer;

610 (b) signs an affidavit that [~~the electronic cigarette substance, the prefilled electronic~~
611 ~~cigarette,]~~ the alternative nicotine product[~~, the nontherapeutic nicotine device substance, or the~~
612 ~~prefilled nontherapeutic nicotine device~~] was sold and shipped to a regular dealer in those
613 articles in another state;

614 (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has
615 received [~~the electronic cigarette substance, the prefilled electronic cigarette,]~~ the alternative
616 nicotine product[~~, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic~~

617 ~~nicotine device~~]; and

618 (d) reports the name and address of the purchaser.

619 (2) A wholesaler or distributor in this state that exports [~~an electronic cigarette~~
620 ~~substance, a prefilled electronic cigarette,~~] an alternative nicotine product[~~, a nontherapeutic~~
621 ~~nicotine device substance, or a prefilled nontherapeutic nicotine device~~] to a regular dealer in
622 those articles in another state shall be exempt from the payment of any tax under this chapter
623 upon furnishing proof of the sale and exportation as the commission may require.

624 Section 11. Section **59-14-807** is amended to read:

625 **59-14-807. Electronic Cigarette Substance and Nicotine Product Tax Restricted**
626 **Account.**

627 (1) There is created within the General Fund a restricted account known as the
628 "Electronic Cigarette Substance and Nicotine Product Tax Restricted Account."

629 (2) The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account
630 consists of:

631 (a) [~~revenues~~] revenue collected from the tax imposed by [~~Section~~] Sections
632 59-14-804 and 59-14-903; and

633 (b) amounts appropriated by the Legislature.

634 (3) (a) For each fiscal year[~~, beginning with fiscal year 2021~~], and subject to
635 appropriation by the Legislature, the Division of Finance shall distribute from the Electronic
636 Cigarette Substance and Nicotine Product Tax Restricted Account:

637 [~~(a)~~] (i) \$2,000,000, which shall be allocated to the local health departments by the
638 Department of Health using the formula created in accordance with Section 26A-1-116;

639 [~~(b)~~] (ii) \$2,000,000 to the Department of Health for statewide cessation programs and
640 prevention education;

641 [~~(c)~~] (iii) \$1,180,000 to the Department of Public Safety for law enforcement officers
642 aimed at disrupting organizations and networks that provide tobacco products, electronic
643 cigarette products, nicotine products, and other illegal controlled substances to minors;

644 [~~(d)~~] (iv) \$3,000,000, which shall be allocated to the local health departments by the
645 Department of Health using the formula created in accordance with Section 26A-1-116;

646 [~~(e)~~] (v) \$5,084,200 to the State Board of Education for school-based prevention
647 programs; and

648 ~~[(f)]~~ (vi) \$2,000,000 to the Department of Health for alcohol, tobacco, and other drug
649 prevention, reduction, cessation, and control programs that promote unified messages and
650 make use of media outlets, including radio, newspaper, billboards, and television.

651 (b) If the amount in the Electronic Cigarette Substance and Nicotine Product Tax
652 Restricted Account is insufficient to cover the distributions described in Subsection (3)(a), the
653 distribution amounts shall be adjusted proportionately.

654 (4) (a) The local health departments shall use the money received in accordance with
655 Subsection (3)(a) for enforcing:

- 656 (i) the regulation provisions described in Section [26-57-103](#);
657 (ii) the labeling requirement described in Section [26-57-104](#); and
658 (iii) the penalty provisions described in Section [26-62-305](#).

659 (b) The Department of Health shall use the money received in accordance with
660 Subsection ~~[(3)(b)]~~ (3)(a)(ii) for the Youth Electronic Cigarette, Marijuana, and Other Drug
661 Prevention Program created in Section [26-7-10](#).

662 (c) The local health departments shall use the money received in accordance with
663 Subsection ~~[(3)(d)]~~ (3)(a)(iv) to issue grants under the Electronic Cigarette, Marijuana, and
664 Other Drug Prevention Grant Program created in Section [26A-1-129](#).

665 (d) The State Board of Education shall use the money received in accordance with
666 Subsection ~~[(3)(e)]~~ (3)(a)(v) to distribute to local education agencies to pay for:

- 667 (i) stipends for positive behaviors specialists as described in Subsection
668 [53G-10-407\(4\)\(a\)\(i\)](#);
669 (ii) the cost of administering the positive behaviors plan as described in Subsection
670 [53G-10-407\(4\)\(a\)\(ii\)](#); and
671 (iii) the cost of implementing an Underage Drinking and Substance Abuse Prevention
672 Program in grade 4 or 5, as described in Subsection [53G-10-406\(3\)\(b\)](#).

673 (5) (a) The fund shall earn interest.

674 (b) All interest earned on fund money shall be deposited into the fund.

675 (6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette
676 Substance and Nicotine Product Tax Restricted Account after the distribution described in
677 Subsection (3) may only be used for programs and activities related to the prevention and
678 cessation of electronic cigarette, nicotine products, marijuana, and other drug use.

679 Section 12. Section **59-14-808** is amended to read:

680 **59-14-808. Restrictions on mail order or Internet sales.**

681 (1) ~~[For purposes of]~~ As used in this section:

682 (a) "Distributor" means a person, wherever residing or located, ~~[who]~~ that:

683 (i) is licensed in this state to purchase a non-taxed alternative nicotine product ~~[or a~~
684 ~~non-taxed electronic cigarette product]~~; and

685 (ii) stores, sells, or otherwise disposes of ~~[a]~~ an alternative nicotine product ~~[or an~~
686 ~~electronic cigarette product]~~.

687 (b) "Licensed person" means the same as that term is defined in Section [59-14-409](#).

688 (c) "Order or purchase" ~~[includes]~~ means:

689 (i) by mail or delivery service;

690 (ii) through the Internet or computer network;

691 (iii) by telephone; or

692 (iv) through some other electronic method.

693 (d) "Retailer" means any person ~~[who]~~ that sells a nicotine product or an electronic
694 cigarette product to consumers for personal consumption.

695 (2) A person, distributor, manufacturer, or retailer ~~[shall]~~ may not:

696 (a) cause ~~[a]~~ an alternative nicotine product ~~[or an electronic cigarette product]~~ to be
697 ordered or purchased by anyone other than a licensed person; or

698 (b) knowingly provide substantial assistance to a person ~~[who]~~ that violates this
699 section.

700 (3) (a) Each order or purchase of ~~[a]~~ an alternative nicotine product ~~[or an electronic~~
701 ~~cigarette product]~~ in violation of Subsection (2) constitutes a separate violation under this
702 section.

703 (b) In addition to the penalties in Subsection (4), a person ~~[who]~~ that violates this
704 section is subject to:

705 (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;

706 (ii) an injunction to restrain a threatened or actual violation of this section; and

707 (iii) recovery by the state for:

708 (A) the costs of investigation;

709 (B) the cost of expert witness fees;

710 (C) the cost of the action; and

711 (D) reasonable attorney's fees.

712 (4) A person ~~[who]~~ that knowingly violates this section has engaged in an unfair and
713 deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court
714 shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged
715 and paid to the state treasurer for deposit ~~[in]~~ into the General Fund.

716 Section 13. Section **59-14-901** is enacted to read:

717 **Part 9. Electronic Cigarette and Nontherapeutic Nicotine Product Licensing and**
718 **Taxation Act**

719 **59-14-901. Definitions.**

720 (1) "Licensee" means a person that holds a valid license to sell an electronic cigarette
721 product or a nontherapeutic nicotine product.

722 (2) "Retail price" means the amount charged by a retailer for an electronic cigarette
723 substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a
724 prefilled nontherapeutic nicotine device.

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

726 **59-14-902. License to sell electronic cigarette product or nontherapeutic nicotine**
727 **product.**

728 (1) A person may not sell, offer to sell, or distribute an electronic cigarette product or a
729 nontherapeutic nicotine product in this state without first obtaining a license from the
730 commission under this section to sell an electronic cigarette product or a nontherapeutic
731 nicotine product.

732 (2) The commission shall issue a license to sell an electronic cigarette product or a
733 nontherapeutic nicotine product to a person that submits an application, on a form created by
734 the commission, that includes:

735 (a) the person's name;

736 (b) the address of the location permitted under Section [26-62-201](#) where the person
737 will sell an electronic cigarette product or a nontherapeutic nicotine product; and

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

739 (3) A license described in Subsection (2) is:

740 (a) valid only at one fixed business address;

- 741 (b) valid for three years;
742 (c) valid only for a physical location; and
743 (d) renewable if a licensee meets the criteria for licensing described in Subsection (2).
744 (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
745 Administrative Rulemaking Act, to establish the additional information described in
746 Subsection (2)(c) that a person shall provide in the application described in Subsection (2).
747 (5) It is a class B misdemeanor for a person to violate Subsection (1).
748 (6) The commission may not charge a fee for a license under this section.
749 Section 15. Section **59-14-903** is enacted to read:
750 **59-14-903. Taxation of electronic cigarette substance, prefilled electronic**
751 **cigarette, nontherapeutic nicotine device substance, and prefilled nontherapeutic nicotine**
752 **device.**
753 (1) A tax is imposed upon the following:
754 (a) an electronic cigarette substance;
755 (b) a prefilled electronic cigarette;
756 (c) a nontherapeutic nicotine device substance; and
757 (d) a prefilled nontherapeutic nicotine device.
758 (2) The amount of tax imposed under Subsection (1) is .50 multiplied by the retail
759 price.
760 (3) If a product is sold in the same package as a product that is taxed under Subsection
761 (1), the tax described in Subsection (2) shall apply to the retail price of the entire packaged
762 product.
763 (4) (a) A retailer shall pay the tax levied under Subsection (1) at the time that an
764 electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device
765 substance, or a prefilled nontherapeutic nicotine device is sold.
766 (b) A consumer who receives an untaxed electronic cigarette substance, prefilled
767 electronic cigarette, nontherapeutic nicotine device substance, or prefilled nontherapeutic
768 nicotine device shall pay the tax at the time the item is first received in the state.
769 (5) (a) The retailer shall remit the taxes collected in accordance with this section to the
770 commission.
771 (b) The commission may allow a credit to a retailer against the tax due under this

772 section for taxes previously paid to the commission on an electronic cigarette substance, a
773 prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled
774 nontherapeutic nicotine device subject to the tax under this section.

775 (c) The commission shall deposit revenue generated by the tax imposed by this section
776 into the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account created in
777 Section [59-14-807](#).

778 (6) On or before November 30 of each year, the Revenue and Taxation Interim
779 Committee shall:

780 (a) receive reports from:

781 (i) the commission on the amount of revenue collected from the tax imposed under this
782 section; and

783 (ii) the recipients of the revenue on the needs of the programs that receive funding in
784 accordance with Section [59-14-807](#) from the tax imposed under this section and Section
785 [59-14-804](#); and

786 (b) if the Revenue and Taxation Interim Committee recommends an adjustment to a
787 tax rate provided in this section, prepare legislation for consideration by the Legislature in the
788 next general session.

789 Section 16. Section **59-14-904** is enacted to read:

790 **59-14-904. Remittance of tax -- Returns -- Invoice required -- Filing requirement**
791 **-- Exception -- Penalty -- Overpayment.**

792 (1) (a) The retailer that pays the tax imposed on an electronic cigarette substance, a
793 prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled
794 nontherapeutic nicotine device shall remit to the commission, in an electronic format approved
795 by the commission:

796 (i) the tax due in the previous calendar quarter; and

797 (ii) the tax return.

798 (b) The tax paid and the return are due on the same dates that the retailer files the sales
799 and use tax return under Section [59-12-107](#).

800 (2) A retailer that sells an electronic cigarette substance, a prefilled electronic cigarette,
801 a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device to an
802 ultimate consumer shall maintain records to determine the amount of tax the retailer is liable to

803 pay under this part for a period of three years from the date of the sale.

804 (3) (a) A consumer that purchases an untaxed electronic cigarette substance, prefilled
805 electronic cigarette, nontherapeutic nicotine device substance, or prefilled nontherapeutic
806 nicotine device for use or other consumption shall:

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

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

810 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
811 due on or before the last day of the month immediately following the month during which the
812 consumer purchased an untaxed electronic cigarette substance, prefilled electronic cigarette,
813 nontherapeutic nicotine product, or prefilled nontherapeutic nicotine device.

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

817 (4) A tourist who imports an untaxed electronic cigarette substance, a prefilled
818 electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic
819 nicotine device into the state does not need to file the statement described in Subsection (3) or
820 pay the tax if the item is for the tourist's own use or consumption while in this state.

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

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

825 (b) pay the tax on time; or

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

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

829 Section 17. Section **59-14-905** is enacted to read:

830 **59-14-905. Restrictions on mail order or Internet sales.**

831 (1) As used in this section:

832 (a) "Distributor" means a person, wherever residing or located, that:

833 (i) is licensed in this state to purchase a non-taxed electronic cigarette product or a

834 non-taxed nontherapeutic nicotine product; and

835 (ii) stores, sells, or otherwise disposes of an electronic cigarette product or a
836 nontherapeutic nicotine device.

837 (b) "Licensed person" means the same as that term is defined in Section [59-14-409](#).

838 (c) "Order or purchase" means:

839 (i) by mail or delivery service;

840 (ii) through the Internet or computer network;

841 (iii) by telephone; or

842 (iv) through some other electronic method.

843 (d) "Retailer" means any person that sells an electronic cigarette product or a
844 nontherapeutic nicotine product to consumers for personal consumption.

845 (2) A person, distributor, manufacturer, or retailer may not:

846 (a) cause an electronic cigarette product or a nontherapeutic nicotine product to be
847 ordered or purchased by anyone other than a licensed person; or

848 (b) knowingly provide substantial assistance to a person that violates this section.

849 (3) (a) Each order or purchase of an electronic cigarette product or a nontherapeutic
850 nicotine product in violation of Subsection (2) constitutes a separate violation under this
851 section.

852 (b) In addition to the penalties in Subsection (4), a person that violates this section is
853 subject to:

854 (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;

855 (ii) an injunction to restrain a threatened or actual violation of this section; and

856 (iii) recovery by the state for:

857 (A) the costs of investigation;

858 (B) the cost of expert witness fees;

859 (C) the cost of the action; and

860 (D) reasonable attorney's fees.

861 (4) A person who knowingly violates this section has engaged in an unfair and
862 deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court
863 shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged
864 and paid to the state treasurer for deposit into the General Fund.

865 Section 18. Section **59-14-906** is enacted to read:

866 **59-14-906. Advertised price.**

867 A retailer shall advertise the price of an electronic cigarette substance, a prefilled
868 electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic
869 nicotine device inclusive of the tax imposed under this chapter.

870 Section 19. Section **59-14-907** is enacted to read:

871 **59-14-907. Report from manufacturer, jobber, distributor, or wholesaler --**
872 **Records.**

873 (1) (a) Every manufacturer, jobber, distributor, or wholesaler manufacturing or
874 importing electronic cigarette substance, prefilled electronic cigarettes, nontherapeutic nicotine
875 device substance, or prefilled nontherapeutic nicotine devices for sale, use, or distribution in
876 the state shall, before the last day of each month, file with the commission a report for the
877 preceding calendar month showing the total quantity of electronic cigarette substance, prefilled
878 electronic cigarettes, nontherapeutic nicotine device substance, or prefilled nontherapeutic
879 nicotine devices manufactured or imported during the preceding monthly period.

880 (b) The report shall contain:

881 (i) the amount of taxes the manufacturer, jobber, distributor, or wholesaler paid on
882 electronic cigarette substance, prefilled electronic cigarettes, nontherapeutic nicotine device
883 substance, or prefilled nontherapeutic nicotine devices under this chapter; and

884 (ii) other information required by the commission.

885 (c) The commission shall credit taxes paid on electronic cigarette substance, a prefilled
886 electronic cigarette, nontherapeutic nicotine device substance, or a prefilled nontherapeutic
887 nicotine device by a manufacturer, jobber, distributor, or wholesaler against the taxes due under
888 Section [59-14-903](#).

889 (2) (a) An electronic cigarette substance, a prefilled electronic cigarette, a
890 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device is
891 considered manufactured when the product is placed in containers for use, sale, or distribution.

892 (b) An electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic
893 nicotine device substance, or a prefilled nontherapeutic nicotine device is considered imported
894 when the product is first received in the state for use, sale, or distribution.

895 (3) (a) It is the duty of every person manufacturing or importing electronic cigarette

896 substance, prefilled electronic cigarettes, nontherapeutic nicotine device substance, or prefilled
897 nontherapeutic nicotine devices for sale in this state to keep and preserve adequate records for a
898 period of three years showing the quantities sold.

899 (b) These records are open to inspection by the commission or the commission's
900 authorized representative during reasonable business hours.

901 (4) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
902 selling an electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic
903 nicotine device substance, or a prefilled nontherapeutic nicotine device to a person other than
904 the ultimate consumer shall furnish the purchaser with an itemized invoice showing:

- 905 (i) the seller's name and address;
906 (ii) the name and address of the purchaser;
907 (iii) the date of sale;
908 (iv) the name and price of the product; and
909 (v) the discount, if any.

910 (b) The seller and the purchaser shall retain copies of the invoice and make the invoice
911 available for inspection at the request of the commission or the commission's agent for a period
912 of three years following the sale.

913 Section 20. Section **59-14-908** is enacted to read:

914 **59-14-908. Reports of manufacturer, jobber, distributor, or wholesaler located**
915 **outside the state.**

916 Every manufacturer, jobber, distributor, or wholesaler outside the state, shipping an
917 electronic cigarette substance, a prefilled electronic cigarette, nontherapeutic nicotine device
918 substance, or a prefilled nontherapeutic nicotine device into the state, for sale, use, or
919 consumption within the state shall file a report:

- 920 (1) with the commission, before the last day of each month;
921 (2) in a form approved by the commission for the preceding calendar month; and
922 (3) containing any information required by the commission.

923 Section 21. Section **59-14-909** is enacted to read:

924 **59-14-909. Effect of failing to file a report or return.**

925 If any person that is liable for the tax and is required by this chapter or by the rules of
926 the commission to file a report or return with respect to the tax or to file a report that contains

927 information required to determine the amount of tax, fails, neglects, or refuses to file the report
928 or return, the commission shall:

929 (1) estimate the quantity of electronic cigarette substance, prefilled electronic
930 cigarettes, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine
931 devices upon which the tax is payable; and

932 (2) assess the tax against the person that fails to file the report or the return.

933 Section 22. Section **63I-1-259** is amended to read:

934 **63I-1-259. Repeal dates: Title 59.**

935 (1) Section [59-1-213.1](#) is repealed May 9, 2024.

936 (2) Section [59-1-213.2](#) is repealed May 9, 2024.

937 (3) Subsection [59-1-405\(1\)\(g\)](#) is repealed May 9, 2024.

938 (4) Subsection [59-1-405\(2\)\(b\)](#) is repealed May 9, 2024.

939 (5) Section [59-7-618.1](#) is repealed July 1, 2029.

940 (6) Section [59-9-102.5](#) is repealed December 31, 2030.

941 (7) Section [59-10-1033.1](#) is repealed July 1, 2029.

942 (8) Section [59-14-907](#) is repealed July 1, 2029.

943 (9) Section [59-14-908](#) is repealed July 1, 2029.

944 (10) Section [59-14-909](#) is repealed July 1, 2029.

945 Section 23. **Effective date.**

946 This bill takes effect on January 1, 2024.