

## SB0263S01 compared with SB0263

~~{deleted text}~~ shows text that was in SB0263 but was deleted in SB0263S01.

inserted text shows text that was not in SB0263 but was inserted into SB0263S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT TAX AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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#### 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}~~ provides for proportional reductions in the amounts distributed from the Electronic Cigarette Substance and ~~{Nontherapeutic}~~ Nicotine Product ~~{Licensing and Taxation Act}~~;

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- defines "retail price";
- imposes a tax on the retail price rather than the manufacturer's sale price of electronic cigarettes and nontherapeutic nicotine products; Tax Restricted Account (the account) if the revenue deposited into the account is insufficient to fund the statutory amounts;
- ▶ extends the use of the account revenue to include funding compliance personnel within the State Tax Commission; and
- ▶ requires the ~~{retailer}~~ State Tax Commission to ~~{pay}~~:
  - increase enforcement of the {tax on an} collection of the electronic cigarette ~~{product or a nontherapeutic}~~ and nicotine product~~{~~;
- adjusts the rate of the } tax;
  - ~~{ }~~ ~~{provides for distribution}~~ • conduct a study on enforcement and collection of ~~{tax revenue for}~~ the electronic cigarette ~~{products, nontherapeutic}~~ and nicotine ~~{products; and alternative nicotine products; and~~
- makes technical and conforming changes } product tax; and
  - report the State Tax Commission's findings and recommendations to the Revenue and Taxation Interim Committee.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ This bill provides a special effective date. }~~ None

### Utah Code Sections Affected:

AMENDS:

- ~~{ 10-8-41.6, as last amended by Laws of Utah 2022, Chapter 255~~
- ~~17-50-333, as last amended by Laws of Utah 2022, Chapter 255~~
- ~~26-62-102, as last amended by Laws of Utah 2020, Chapters 302, 347~~
- ~~26-62-206, as enacted by Laws of Utah 2020, Chapter 347~~
- ~~59-14-801, as last amended by Laws of Utah 2020, Chapter 347~~
- ~~59-14-802, as last amended by Laws of Utah 2020, Chapter 347~~
- ~~59-14-803, as last amended by Laws of Utah 2020, Chapter 347~~

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

~~59-14-805~~, as enacted by Laws of Utah 2020, Chapter 347

~~59-14-806~~, as enacted by Laws of Utah 2020, Chapter 347

‡ **59-14-807**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

{ ~~59-14-808~~, as enacted by Laws of Utah 2020, Chapter 347

~~631-1-259~~, as last amended by Laws of Utah 2022, Chapter 218

‡ENACTS:

~~{59-14-901}~~ **59-14-809**, Utah Code Annotated 1953

{ ~~59-14-902~~, Utah Code Annotated 1953

~~59-14-903~~, Utah Code Annotated 1953

~~59-14-904~~, Utah Code Annotated 1953

~~59-14-905~~, Utah Code Annotated 1953

~~59-14-906~~, Utah Code Annotated 1953

~~59-14-907~~, Utah Code Annotated 1953

~~59-14-908~~, Utah Code Annotated 1953

~~59-14-909~~, Utah Code Annotated 1953

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

Section 1. Section ~~{10-8-41.6}~~ **59-14-807** is amended to read:

{ ~~10-8-41.6. Regulation of retail tobacco specialty business.~~

~~(1) As used in this section:~~

~~(a) "Community location" means:~~

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

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

~~(iii) a trade or technical school;~~

~~(iv) a church;~~

~~(v) a public library;~~

~~(vi) a public playground;~~

~~(vii) a public park;~~

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

~~(ix) a public recreational facility;~~

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- ~~—— (x) a public arcade; or~~
- ~~—— (xi) for a new license issued on or after July 1, 2018, a homeless shelter;~~
- ~~—— (b) "Department" means the Department of Health and Human Services created in Section 26B-1-201.~~
- ~~—— (c) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (d) "Flavored electronic cigarette product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (e) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.~~
- ~~—— (f) "Local health department" means the same as that term is defined in Section 26A-1-102.~~
- ~~—— (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (h) "Retail tobacco specialty business" means a commercial establishment in which:~~
  - ~~—— (i) sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment;~~
  - ~~—— (ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~
  - ~~—— (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~
  - ~~—— (iv) the commercial establishment:~~
    - ~~—— (A) holds itself out as a retail tobacco specialty business; and~~
    - ~~—— (B) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;~~
  - ~~—— (v) any flavored electronic cigarette product is sold; or~~
  - ~~—— (vi) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.~~
- ~~—— (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.~~
- ~~—— (j) "Tobacco product" means:~~
  - ~~—— (i) a tobacco product as defined in Section 76-10-101; or~~

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~~—— (ii) tobacco paraphernalia as defined in Section 76-10-101.~~

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

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

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

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

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

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

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

~~—— (A) agriculture use; or~~

~~—— (B) residential use.~~

~~—— (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.~~

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

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

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

~~—— (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid~~

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~~license issued by the State Tax Commission in accordance with Section 59-14-803 or 59-14-902 to sell an electronic cigarette product or a nicotine product:~~

~~—— (6) (a) Nothing in this section:~~

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

~~—— (ii) prohibits a municipality from adopting more restrictive requirements on a person seeking a license or renewal of a license to conduct business as a retail tobacco specialty business:~~

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

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

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

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

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

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

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

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

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

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

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

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

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- ~~—— (iii) the retail tobacco specialty business does not substantially change the business premises or business operation; and~~
- ~~—— (iv) the retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including:~~
  - ~~—— (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;~~
  - ~~—— (B) zoning ordinances;~~
  - ~~—— (C) building codes; and~~
  - ~~—— (D) the requirements of the license described in Subsection (7)(a)(i):~~
- ~~—— (c) A retail tobacco specialty business that does not qualify for an exemption under Subsection (7)(a) is exempt from Subsection (4) if:~~
  - ~~—— (i) on or before December 31, 2018, the retail tobacco specialty business was issued a general tobacco retailer permit or a retail tobacco specialty business permit under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located;~~
  - ~~—— (ii) the retail tobacco specialty business is operating in the municipality in accordance with all applicable laws except for the requirement in Subsection (4); and~~
  - ~~—— (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school;~~
  - ~~—— (d) Except as provided in Subsection (7)(c), a retail tobacco specialty business may maintain an exemption under Subsection (7)(c) if:~~
    - ~~—— (i) on or before December 31, 2020, the retail tobacco specialty business receives a retail tobacco specialty business permit from the local health department having jurisdiction over the area in which the retail tobacco specialty business is located;~~
    - ~~—— (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse or permanent revocation;~~
    - ~~—— (iii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60 consecutive days;~~
    - ~~—— (iv) the retail tobacco specialty business does not substantially change the business premises or business operation as the business existed when the retail tobacco specialty~~

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~~business received a permit under Subsection (7)(d)(i); and~~

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

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

~~—— (B) zoning ordinances;~~

~~—— (C) building codes; and~~

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

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

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

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

~~—— Section 2. Section 17-50-333 is amended to read:~~

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

~~—— (1) As used in this section:~~

~~—— (a) "Community location" means:~~

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

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

~~—— (iii) a trade or technical school;~~

~~—— (iv) a church;~~

~~—— (v) a public library;~~

~~—— (vi) a public playground;~~

~~—— (vii) a public park;~~

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

~~—— (ix) a public recreational facility;~~

~~—— (x) a public arcade; or~~

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



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- ~~—— (b) "Department" means the Department of Health and Human Services created in Section 26B-1-201.~~
- ~~—— (c) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (d) "Flavored electronic cigarette product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (e) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.~~
- ~~—— (f) "Local health department" means the same as that term is defined in Section 26A-1-102.~~
- ~~—— (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (h) "Retail tobacco specialty business" means a commercial establishment in which:~~
  - ~~—— (i) sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment;~~
  - ~~—— (ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~
  - ~~—— (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~
  - ~~—— (iv) the commercial establishment:~~
    - ~~—— (A) holds itself out as a retail tobacco specialty business; and~~
    - ~~—— (B) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;~~
  - ~~—— (v) any flavored electronic cigarette product is sold; or~~
  - ~~—— (vi) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.~~
- ~~—— (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.~~
- ~~—— (j) "Tobacco product" means:~~
  - ~~—— (i) the same as that term is defined in Section 76-10-101; or~~
  - ~~—— (ii) tobacco paraphernalia as defined in Section 76-10-101.~~
- ~~—— (2) The regulation of a retail tobacco specialty business is an exercise of the police~~

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~~powers of the state by the state or by the delegation of the state's police power to other governmental entities:~~

~~—— (3) (a) A person may not operate a retail tobacco specialty business in a county unless the person obtains a license from the county in which the retail tobacco specialty business is located.~~

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

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

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

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

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

~~—— (A) agriculture use; or~~

~~—— (B) residential use.~~

~~—— (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.~~

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

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

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

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

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~~—— (6) (a) Nothing in this section:~~

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

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

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

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

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

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

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

~~—— (7) (a) Except as provided in Subsection (7)(c), a retail tobacco specialty business is exempt from Subsection (4) if:~~

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

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

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

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

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

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

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

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

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

~~—— (B) zoning ordinances;~~

~~—— (C) building codes; and~~

~~—— (D) the requirements of the license described in Subsection (7)(a)(i):~~

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

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

~~—— (ii) the retail tobacco specialty business is operating in the county in accordance with all applicable laws except for the requirement in Subsection (4); and~~

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

~~—— (d) A retail tobacco specialty business may maintain an exemption under Subsection (7)(c) if:~~

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

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

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

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

~~—— (v) the retail tobacco specialty business maintains the right to operate under the terms~~

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of other applicable laws, including:

- ~~—— (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;~~
- ~~—— (B) zoning ordinances;~~
- ~~—— (C) building codes; and~~
- ~~—— (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).~~
- ~~—— (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco specialty business:~~

- ~~—— (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use and located within a group of architecturally unified commercial establishments built on a site that is planned, developed, owned, and managed as an operating unit; and~~
- ~~—— (ii) continues to meet the requirements described in Subsection (7)(b) that are not directly related to the relocation described in this Subsection (7)(e).~~

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

~~—— **26-62-102. Definitions:**~~

~~—— As used in this chapter:~~

- ~~—— (1) "Community location" means the same as that term is defined:~~
  - ~~—— (a) as it relates to a municipality, in Section 10-8-41.6; and~~
  - ~~—— (b) as it relates to a county, in Section 17-50-333.~~
- ~~—— (2) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (3) "Employee" means an employee of a tobacco retailer.~~
- ~~—— (4) "Enforcing agency" means the state Department of Health, or any local health department enforcing the provisions of this chapter.~~
- ~~—— (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.~~
- ~~—— (6) "Local health department" means the same as that term is defined in Section 26A-1-102.~~
- ~~—— (7) "Nicotine product" means the same as that term is defined in Section 76-10-101.~~
- ~~—— (8) "Owner" means a person holding a 20% ownership interest in the business that is~~

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~~required to obtain a permit under this chapter:~~

~~—— (9) "Permit" means a tobacco retail permit issued under this chapter.~~

~~—— (10) (a) "Proof of age" means:~~

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

~~—— (ii) a valid identification that:~~

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

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

~~—— (C) includes date of birth; and~~

~~—— (D) has a picture affixed;~~

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

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

~~—— (A) includes date of birth; and~~

~~—— (B) has a picture affixed; or~~

~~—— (v) a valid passport.~~

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

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

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

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

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

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

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

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

~~—— (d) Section 59-14-902 to sell an electronic cigarette product or a nontherapeutic~~

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### nicotine product.

~~—— (13) "Tobacco product" means:~~

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

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

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

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

### ~~—— 26-62-206. Requirements for the sale of tobacco product, electronic cigarette product, or nicotine product:~~

~~—— (1) A tobacco retailer shall:~~

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

~~—— (i) the name of the tobacco product, the electronic cigarette product, or the nicotine product;~~

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

~~—— (iii) the date and time of the sale; and~~

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

~~—— (i) the name of the tobacco product, the electronic cigarette product, or the nicotine product;~~

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

~~—— (iii) the date and time of the sale.~~

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

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

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

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

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

### ~~Part 8. Alternative Nicotine Product Licensing and Taxation Act~~

~~59-14-801. Title:~~

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

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

~~59-14-802. Definitions:~~

~~As used in this part:~~

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

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

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

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

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

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

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

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

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

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

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



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

~~—— (a) the person's name;~~

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

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

~~—— (4) A license described in Subsection (3) is:~~

~~—— (a) valid only at one fixed business address;~~

~~—— (b) valid for three years;~~

~~—— (c) valid only for a physical location; and~~

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

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

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

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

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

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

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

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

~~—— (6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the additional information described in~~

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~~Subsection (3)(c) that a person shall provide in the application described in Subsection (3).~~

~~—— (7) It is a class B misdemeanor for a person to violate Subsection (1):~~

~~—— (8) The commission may not charge a fee for a license under this section:~~

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

~~—— **59-14-804. Taxation of alternative nicotine product.**~~

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

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

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

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

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

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

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

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

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

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

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

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

~~—— [(ii)] (b) If the net weight of the alternative nicotine product is in a quantity that is a fractional part of one ounce, a proportionate amount of the tax described in Subsection~~

~~[(2)(b)(i)(A)] (2)(a)(i) is imposed:~~

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

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

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

~~—— (4) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall pay the tax levied under Subsection (1) at the time that [an electronic cigarette substance, a~~

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~~prefilled electronic cigarette,] an alternative nicotine product[, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device] is first received in the state:~~

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

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

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

~~—— Section 9. Section ~~59-14-805~~ is amended to read:~~

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

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

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

~~—— (ii) the quarterly tax return:~~

~~—— (b) The tax collected and the return are due on or before the last day of April, July, October, and January:~~

~~—— (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person selling [an electronic cigarette substance, a prefilled electronic cigarette,] an alternative nicotine product[, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device] to a person other than the ultimate consumer shall furnish the purchaser with an itemized invoice showing:~~

~~—— (i) the seller's name and address;~~

~~—— (ii) the name and address of the purchaser;~~

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~~—— (iii) the date of sale;~~

~~—— (iv) the name and price of the product; and~~

~~—— (v) the discount, if any.~~

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

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

~~—— (3) (a) A consumer that purchases an untaxed [electronic cigarette substance, prefilled electronic cigarette,] alternative nicotine product[, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine device] for use or other consumption shall:~~

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

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

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

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

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

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

~~—— (a) pay the tax prescribed by this part;~~

~~—— (b) pay the tax on time; or~~

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~~\_\_\_\_\_ (c) file a return required by this part.~~

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

~~\_\_\_\_\_ Section 10. Section 59-14-806 is amended to read:~~

~~\_\_\_\_\_ 59-14-806. Refund of taxes paid -- Exemption for exported alternative nicotine products:~~

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

~~\_\_\_\_\_ (a) is a licensed dealer;~~

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

~~\_\_\_\_\_ (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has received [the electronic cigarette substance, the prefilled electronic cigarette,] the alternative nicotine product[, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic nicotine device]; and~~

~~\_\_\_\_\_ (d) reports the name and address of the purchaser.~~

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

~~\_\_\_\_\_ Section 11. Section 59-14-807 is amended to read:~~

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

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

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

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

(b) amounts appropriated by the Legislature.

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

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

~~{ }~~ (ii) \$2,000,000 to the Department of Health for statewide cessation programs and prevention education;

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

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

~~{ }~~ (v) \$5,084,200 to the State Board of Education for school-based prevention programs; and

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

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

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

(i) the regulation provisions described in Section 26-57-103;

(ii) the labeling requirement described in Section 26-57-104; and

(iii) the penalty provisions described in Section 26-62-305.

(b) The Department of Health shall use the money received in accordance with

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Subsection ~~[(3)(b)]~~ (3)(a)(ii) for the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program created in Section 26-7-10.

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

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

(i) stipends for positive behaviors specialists as described in Subsection 53G-10-407(4)(a)(i);

(ii) the cost of administering the positive behaviors plan as described in Subsection 53G-10-407(4)(a)(ii); and

(iii) the cost of implementing an Underage Drinking and Substance Abuse Prevention Program in grade 4 or 5, as described in Subsection 53G-10-406(3)(b).

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

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

(6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account after the distribution described in Subsection (3) may only be used for:

(a) funding commission personnel to enforce compliance with the tax collection requirements of this part; and

(b) programs and activities related to the prevention and cessation of electronic cigarette, nicotine products, marijuana, and other drug use.

Section ~~{12}2~~. Section ~~{59-14-808}~~59-14-809 is ~~{amended}~~enacted to read:

~~59-14-808. Restrictions on mail order or Internet sales:~~

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

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

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

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

~~(b) "Licensed person" means the same as that term is defined in Section~~

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~~59-14-409:~~

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

~~—— (i) by mail or delivery service;~~

~~—— (ii) through the Internet or computer network;~~

~~—— (iii) by telephone; or~~

~~—— (iv) through some other electronic method;~~

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

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

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

~~—— (b) knowingly provide substantial assistance to a person [who] that violates this section:~~

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

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

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

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

~~—— (iii) recovery by the state for:~~

~~—— (A) the costs of investigation;~~

~~—— (B) the cost of expert witness fees;~~

~~—— (C) the cost of the action; and~~

~~—— (D) reasonable attorney's fees.~~

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

~~—— Section 13. Section 59-14-901 is enacted to read:~~



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### Part 9. 59-14-809. Commission study on enforcement and collection of tax.

(1) The commission shall:

(a) implement increased enforcement of the tax imposed by this part; and

(b) study issues related to increased enforcement and compliance with the requirements of this part.

(2) The study shall include a review of:

(a) the impact of increased enforcement on collections of the tax imposed by this part;

(b) options for long-term funding of increased enforcement of the tax imposed by this part;

(c) the sufficiency of collections of the tax imposed by this part to fund distributions from the Electronic Cigarette Substance and ~~Nontherapeutic~~ Nicotine Product ~~Licensing and Taxation Act~~

#### 59-14-901. Definitions.

(1) "Licensee" means a person that holds a valid license to sell an ~~Account under Section 59-14-807;~~ Tax Restricted

(d) impacts of a lack of federal regulation of electronic ~~cigarette product or a nontherapeutic nicotine product.~~

(2) "Retail price" means the amount charged by a retailer for ~~cigarettes on enforcement and compliance efforts; and~~

(e) potential impacts on compliance of changing the incidence of taxation to a tax imposed on the retail sale of an electronic cigarette substance ~~, a~~ or prefilled electronic cigarette ~~, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.~~

~~Section 14. Section 59-14-902 is enacted to read:~~

~~59-14-902. License to sell electronic cigarette product or nontherapeutic nicotine product.~~

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

~~(2) The commission shall ~~issue a license to sell an electronic cigarette product or a~~~~

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~~nontherapeutic nicotine product to a person that submits an application, on a form created by the commission, that includes:~~

- ~~—— (a) the person's name;~~
- ~~—— (b) the address of the location permitted under Section 26-62-201 where the person will sell an electronic cigarette product or a nontherapeutic nicotine product; and~~
- ~~—— (c) any other information the commission requires to implement this chapter.~~
- ~~—— (3) A license~~annually report the commission's findings and recommendations on the study items described in Subsections (2)(a) through (d) to the Revenue and Taxation Interim Committee on or before the September interim meeting.

(4) The commission shall report the commission's findings and recommendations on the study item described in Subsection (2) ~~is:~~

- ~~—— (a) valid only at one fixed business address;~~
- ~~—— (b) valid for three years;~~
- ~~—— (c) valid only for a physical location; and~~
- ~~—— (d) renewable if a licensee meets the criteria for licensing described in Subsection (2).~~
- ~~—— (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the additional information described in Subsection (2)(c) that a person shall provide in the application described in Subsection (2).~~
- ~~—— (5) It is a class B misdemeanor for a person to violate Subsection (1).~~
- ~~—— (6) The commission may not charge a fee for a license under this section.~~

~~Section 15. Section 59-14-903 is enacted to read:~~

~~59-14-903. Taxation of electronic cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine device substance, and prefilled nontherapeutic nicotine device:~~

- ~~—— (1) A tax is imposed upon the following:~~
  - ~~—— (a) an electronic cigarette substance;~~
  - ~~—— (b) a prefilled electronic cigarette;~~
  - ~~—— (c) a nontherapeutic nicotine device substance; and~~
  - ~~—— (d) a prefilled nontherapeutic nicotine device.~~
- ~~—— (2) The amount of tax imposed under Subsection (1) is .50 multiplied by the retail price.~~

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~~—— (3) If a product is sold in the same package as a product that is taxed under Subsection (1), the tax described in Subsection (2) shall apply to the retail price of the entire packaged product.~~

~~—— (4) (a) A retailer shall pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device is sold.~~

~~—— (b) A consumer who receives an untaxed electronic cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine device shall pay the tax at the time the item is first received in the state.~~

~~—— (5) (a) The retailer shall remit the taxes collected in accordance with this section to the commission.~~

~~—— (b) The commission may allow a credit to a retailer against the tax due under this section for taxes previously paid to the commission on an electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device subject to the tax under this section.~~

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

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

~~—— (a) receive reports from:~~

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

~~—— (ii) the recipients of the revenue on the needs of the programs that receive funding in accordance with Section 59-14-807 from the tax imposed under this section and Section 59-14-804; and~~

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

~~—— Section 16. Section 59-14-904 is enacted to read:~~

~~—— 59-14-904. Remittance of tax -- Returns -- Invoice required -- Filing requirement~~

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### ~~==Exception == Penalty == Overpayment:~~

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

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

~~—— (ii) the tax return.~~

~~—— (b) The tax paid and the return are due on the same dates that the retailer files the sales and use tax return under Section 59-12-107.~~

~~—— (2) A retailer that sells an electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device to an ultimate consumer shall maintain records to determine the amount of tax the retailer is liable to pay under this part for a period of three years from the date of the sale.~~

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

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

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

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

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

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

~~—— (5) In addition to the tax required by this part, a person shall pay a penalty as provided~~

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~~in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402, if a person subject to this section fails to:~~

~~—— (a) pay the tax prescribed by this part;~~

~~—— (b) pay the tax on time; or~~

~~—— (c) file a return required by this part.~~

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

~~—— Section 17. Section 59-14-905 is enacted to read:~~

~~—— **59-14-905. Restrictions on mail order or Internet sales:**~~

~~—— (1) As used in this section:~~

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

~~—— (i) is licensed in this state to purchase a non-taxed electronic cigarette product or a non-taxed nontherapeutic nicotine product; and~~

~~—— (ii) stores, sells, or otherwise disposes of an electronic cigarette product or a nontherapeutic nicotine device;~~

~~—— (b) "Licensed person" means the same as that term is defined in Section 59-14-409.~~

~~—— (c) "Order or purchase" means:~~

~~—— (i) by mail or delivery service;~~

~~—— (ii) through the Internet or computer network;~~

~~—— (iii) by telephone; or~~

~~—— (iv) through some other electronic method.~~

~~—— (d) "Retailer" means any person that sells an electronic cigarette product or a nontherapeutic nicotine product to consumers for personal consumption;~~

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

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

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

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

~~—— (b) In addition to the penalties in Subsection (4), a person that violates this section is~~

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subject to:

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

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

~~— (iii) recovery by the state for:~~

~~— (A) the costs of investigation;~~

~~— (B) the cost of expert witness fees;~~

~~— (C) the cost of the action; and~~

~~— (D) reasonable attorney's fees.~~

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

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

~~— **59-14-906. Advertised price.**~~

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

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

~~— **59-14-907. Report from manufacturer, jobber, distributor, or wholesaler --**~~

**Records:**

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

~~— (b) The report shall contain:~~

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

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- ~~—— (ii) other information required by the commission;~~
- ~~—— (c) The commission shall credit taxes paid on electronic cigarette substance, a prefilled electronic cigarette, nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device by a manufacturer, jobber, distributor, or wholesaler against the taxes due under Section 59-14-903.~~
- ~~—— (2) (a) An electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device is considered manufactured when the product is placed in containers for use, sale, or distribution.~~
- ~~—— (b) An electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device is considered imported when the product is first received in the state for use, sale, or distribution.~~
- ~~—— (3) (a) It is the duty of every person manufacturing or importing electronic cigarette substance, prefilled electronic cigarettes, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine devices for sale in this state to keep and preserve adequate records for a period of three years showing the quantities sold.~~
- ~~—— (b) These records are open to inspection by the commission or the commission's authorized representative during reasonable business hours.~~
- ~~—— (4) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person selling an electronic cigarette substance, a prefilled electronic cigarette, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device to a person other than the ultimate consumer shall furnish the purchaser with an itemized invoice showing:~~
- ~~—— (i) the seller's name and address;~~
- ~~—— (ii) the name and address of the purchaser;~~
- ~~—— (iii) the date of sale;~~
- ~~—— (iv) the name and price of the product; and~~
- ~~—— (v) the discount, if any.~~
- ~~—— (b) The seller and the purchaser shall retain copies of the invoice and make the invoice available for inspection at the request of the commission or the commission's agent for a period of three years following the sale.~~
- ~~—— Section 20. Section 59-14-908 is enacted to read:~~
- ~~—— 59-14-908. Reports of manufacturer, jobber, distributor, or wholesaler located~~

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### outside the state:

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

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

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

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

~~If any person that is liable for the tax and is required by this chapter or by the rules of the commission to file a report or return with respect to the tax or to file a report that contains information required to determine the amount of tax, fails, neglects, or refuses to file the report or return, the commission shall:~~

- ~~(1) estimate the quantity of electronic cigarette substance, prefilled electronic cigarettes, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine devices upon which the tax is payable; and~~
- ~~(2) assess the tax against the person that fails to file the report or the return.~~

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

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

- ~~(1) Section 59-1-213.1 is repealed May 9, 2024.~~
- ~~(2) Section 59-1-213.2 is repealed May 9, 2024.~~
- ~~(3) Subsection 59-1-405(1)(g) is repealed May 9, 2024.~~
- ~~(4) Subsection 59-1-405(2)(b) is repealed May 9, 2024.~~
- ~~(5) Section 59-7-618.1 is repealed July 1, 2029.~~
- ~~(6) Section 59-9-102.5 is repealed December 31, 2030.~~
- ~~(7) Section 59-10-1033.1 is repealed July 1, 2029.~~
- ~~(8) Section 59-14-907 is repealed July 1, 2029.~~
- ~~(9) Section 59-14-908 is repealed July 1, 2029.~~
- ~~(10) Section 59-14-909 is repealed July 1, 2029.~~

~~Section 23. **Effective date:**~~



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~~This bill takes effect on January 1, 2024.~~

~~§(e) to the Revenue and Taxation Interim Committee on or before the September 2023 interim meeting.~~