{deleted text} shows text that was in SB0263 but was deleted in SB0263S02.

inserted text shows text that was not in SB0263 but was inserted into SB0263S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Curtis S. Bramble proposes the following substitute bill:

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;
- <u>creates} provides for proportional reductions in the amounts distributed from</u> the Electronic Cigarette <u>Substance</u> 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;} 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}:
 - <u>increase enforcement of</u> the \{\text{tax on an}\}\) collection of the electronic cigarette \{\text{product or a nontherapeutic}\}\) and nicotine product \{\text{;}\}
 - 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
 - <u>report the State Tax Commission's findings and recommendations to the Revenue and Taxation Interim Committee.</u>

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a {special effective date.} coordination clause

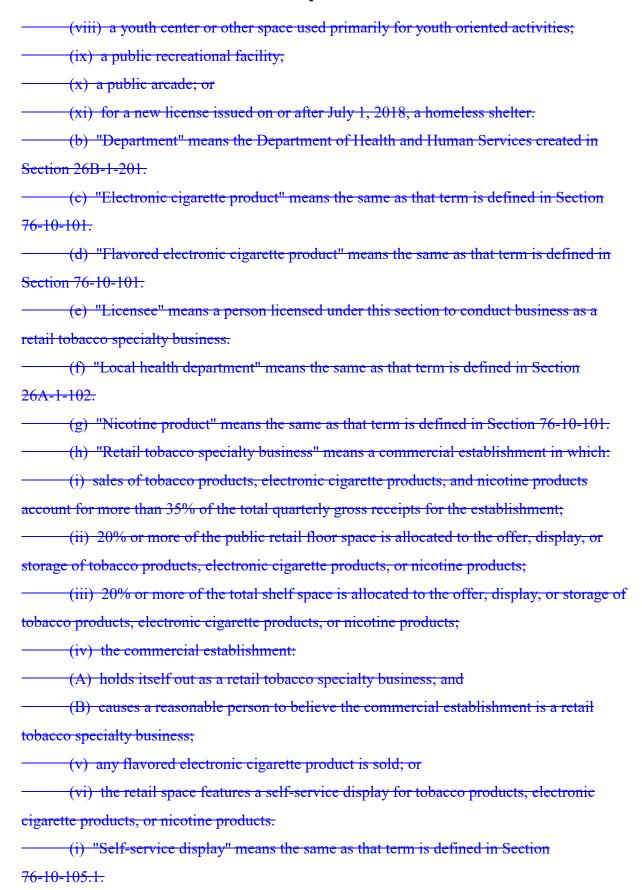
Utah Code Sections Affected:

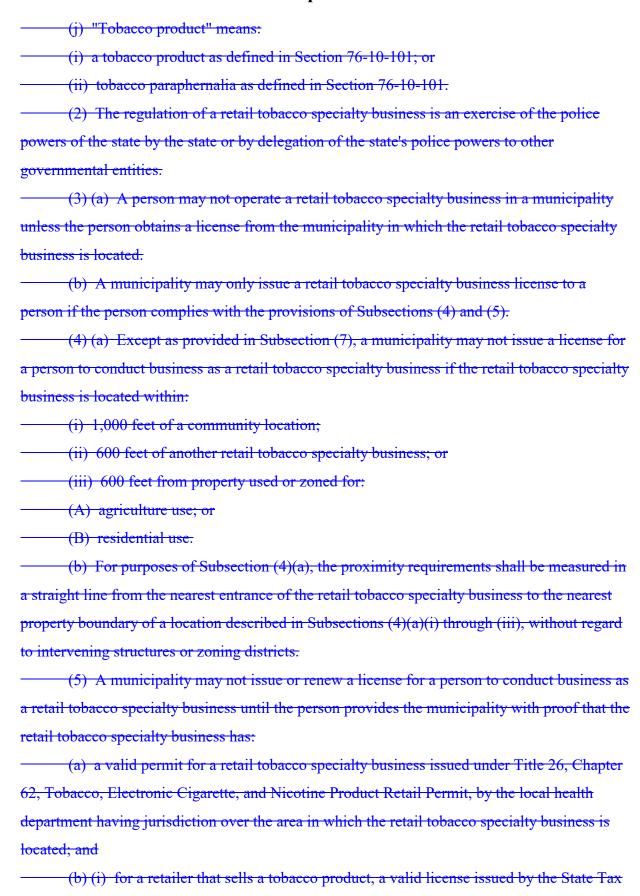
AMENDS:

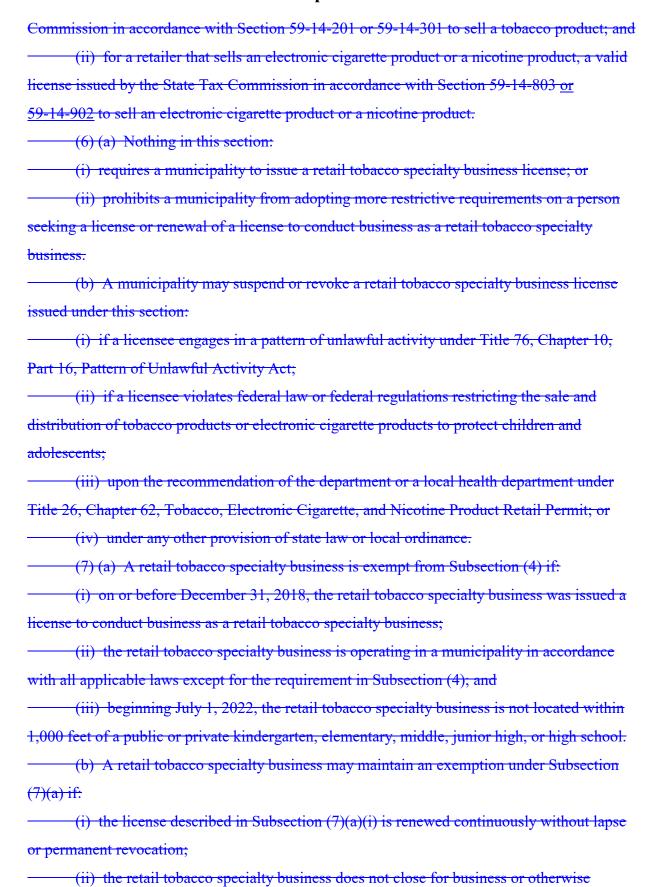
{ 10-8-41.6, as last amended by Laws of Utah 2022, Chapter 255
17-50-333, as last amended by Laws of Utah 2022, Chapter 255
26-62-102, as last amended by Laws of Utah 2020, Chapters 302, 347
26-62-206, as enacted by Laws of Utah 2020, Chapter 347
59-14-801, as last amended by Laws of Utah 2020, Chapter 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
      63I-1-259, as last amended by Laws of Utah 2022, Chapter 218
ENACTS:
       <del>{59-14-901}</del>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 Sections Affected by Coordination Clause:
       59-14-807, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
       59-14-809, Utah Code Annotated 1953
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;
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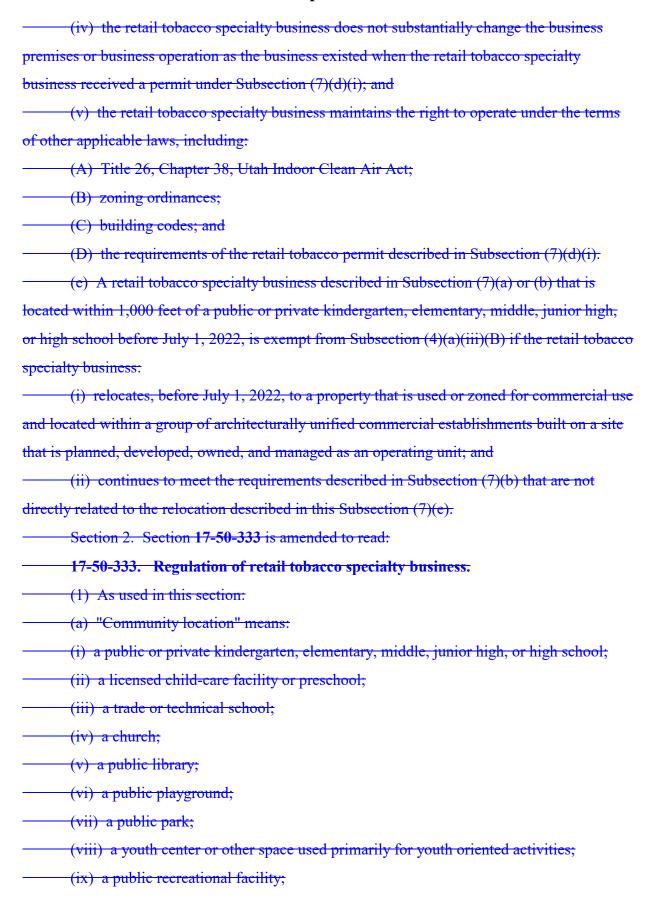
(vii) a public park;

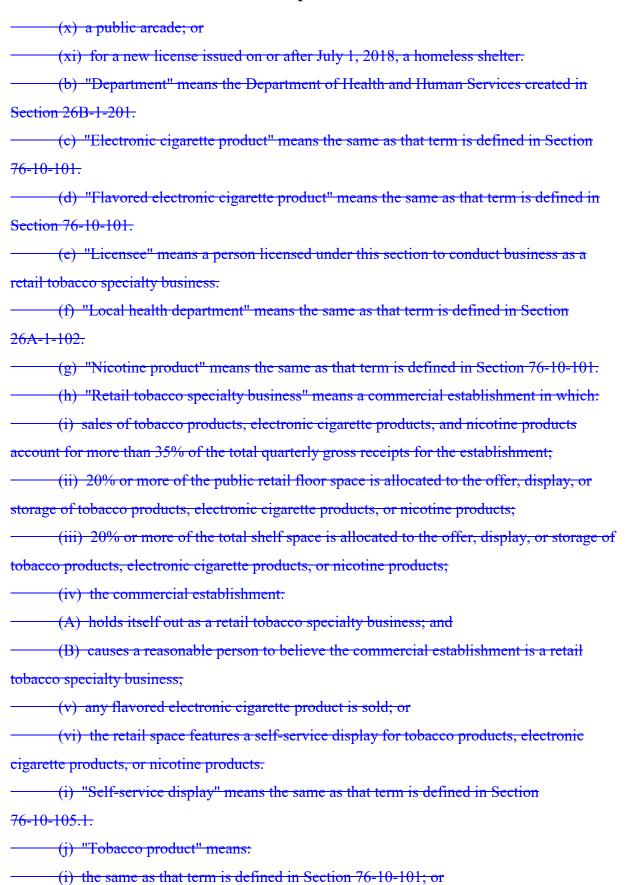


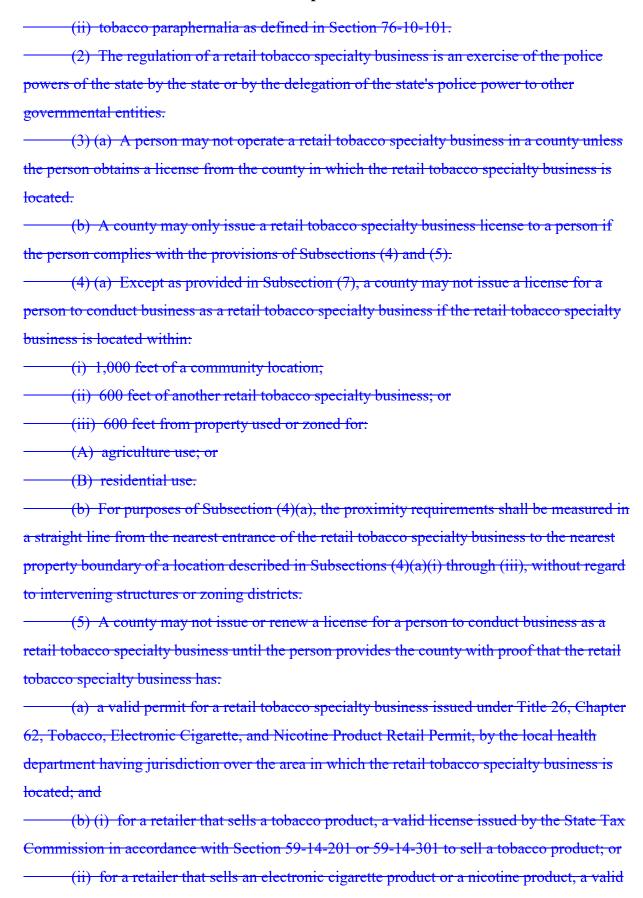


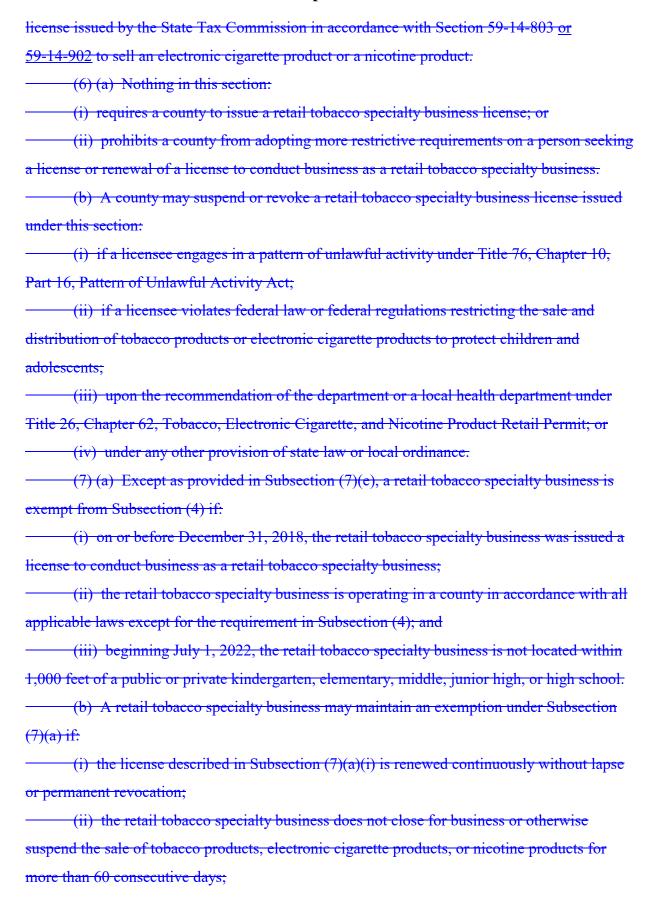


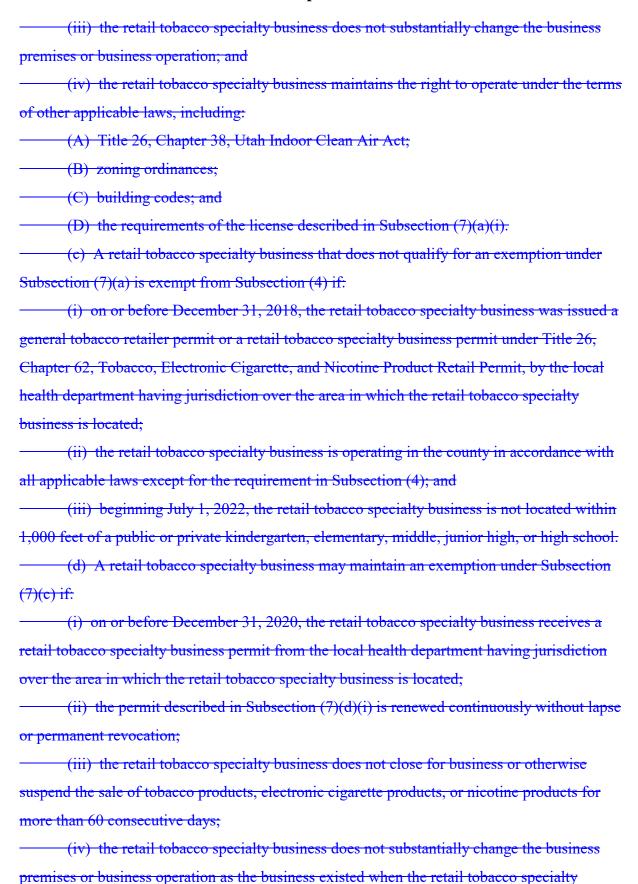
suspend the sale of tobacco products, electronic eigarette products, or nicotine products for more than 60 consecutive days; (iii) the retail tobacco specialty business does not substantially change the business premises or business operation; and (iv) the retail tobacco specialty business maintains 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)(e), 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;

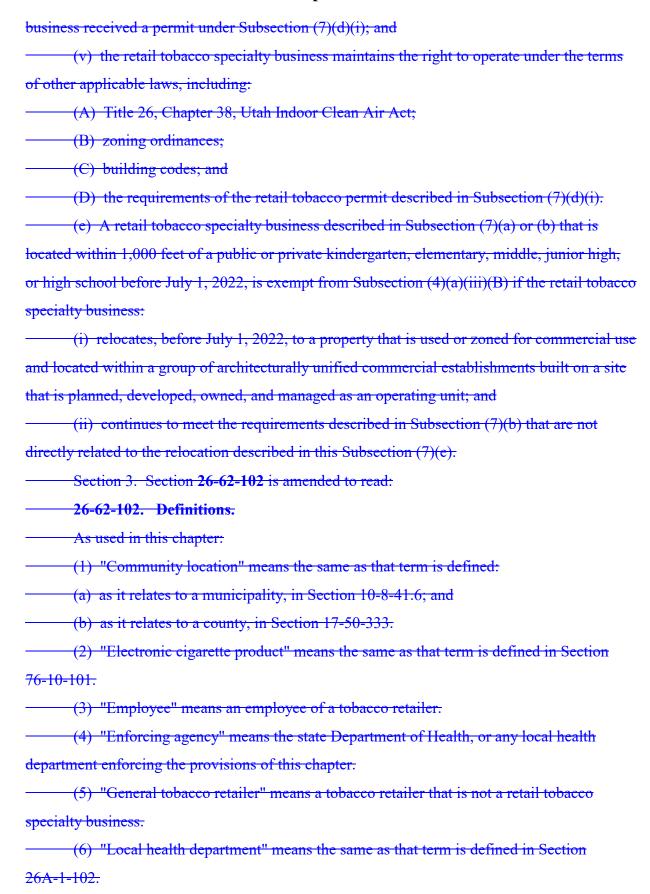


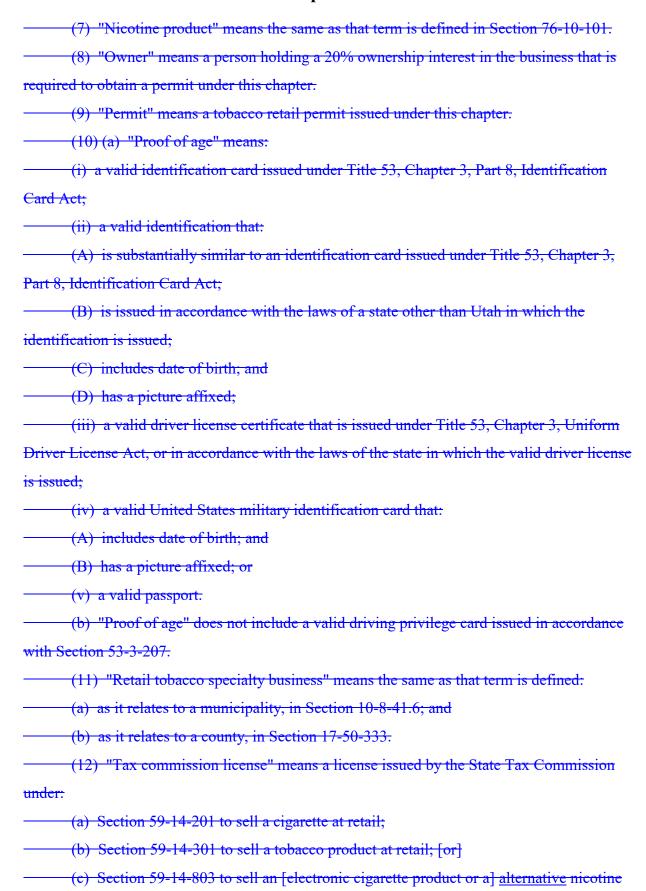


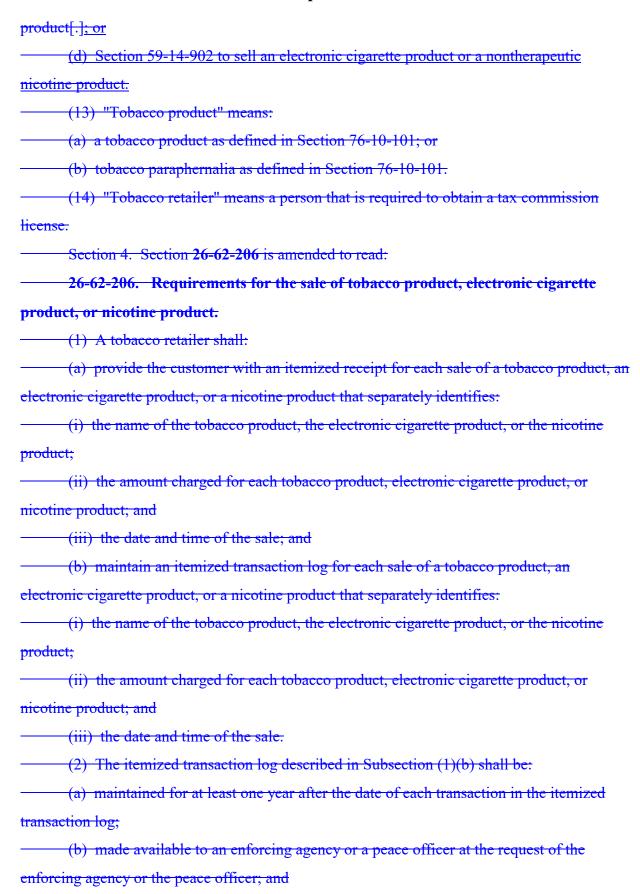


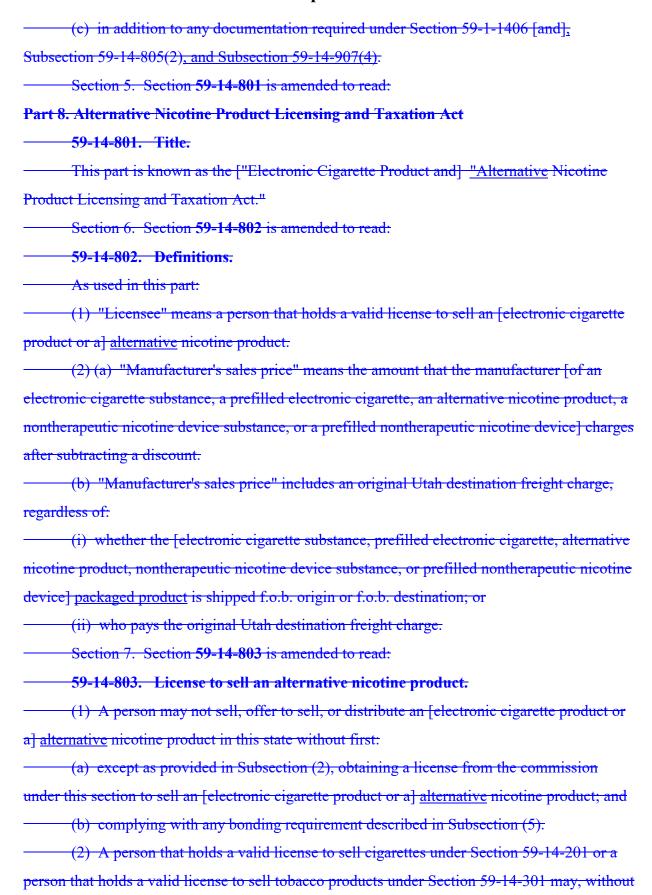




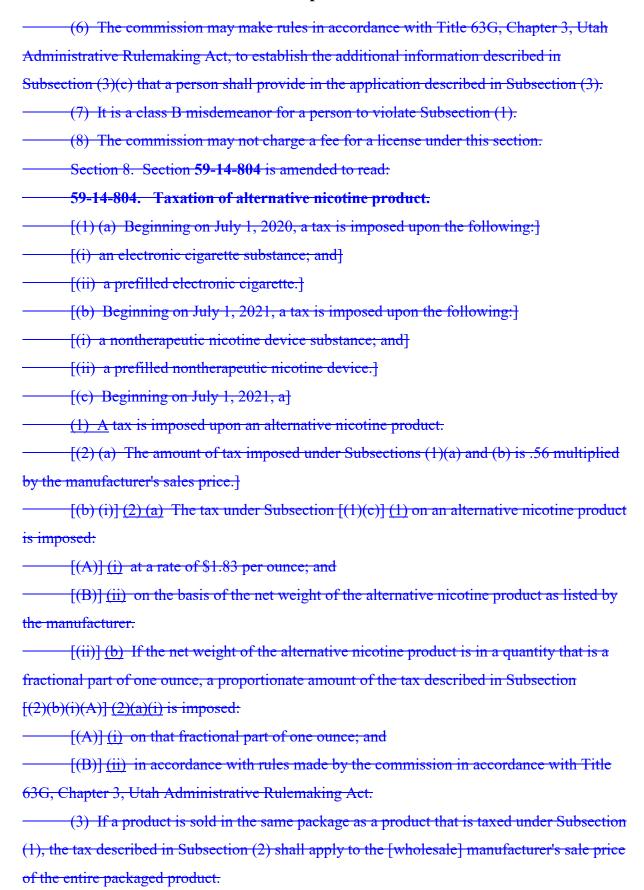






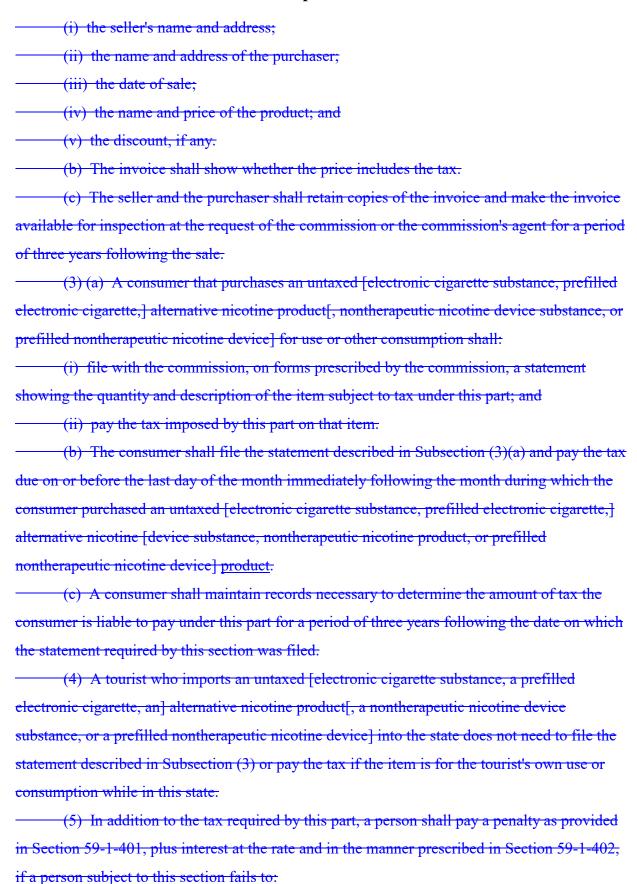


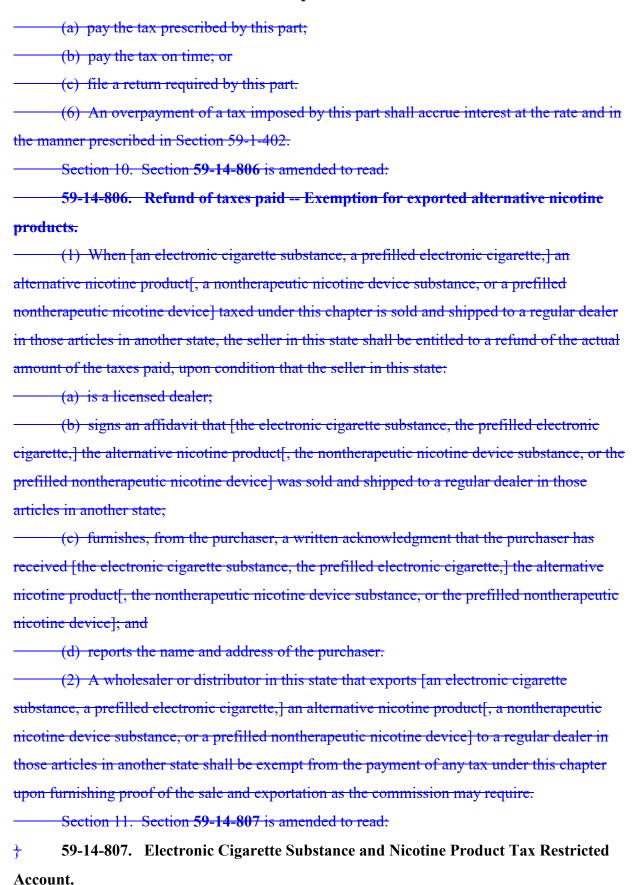
obtaining a separate license in accordance with this section, sell, offer to sell, or distribute an [electronic eigarette product or a] alternative nicotine product in this state. (3) The commission shall issue a license to sell an [electronic cigarette product or a] alternative nicotine product to a 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.



(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 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 eigarette 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:





- (1) There is created within the General Fund a restricted account known as the "Electronic Cigarette Substance and Nicotine Product Tax Restricted Account."
- (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:
- [(a)] (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;
- [(b)] (ii) \$2,000,000 to the Department of Health for statewide cessation programs and prevention education;
- [(c)] (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;
- [(d)] (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;
- $[\underbrace{(e)}]$ (\underline{v}) \$5,084,200 to the State Board of Education for school-based prevention programs; and
- [(f)] (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

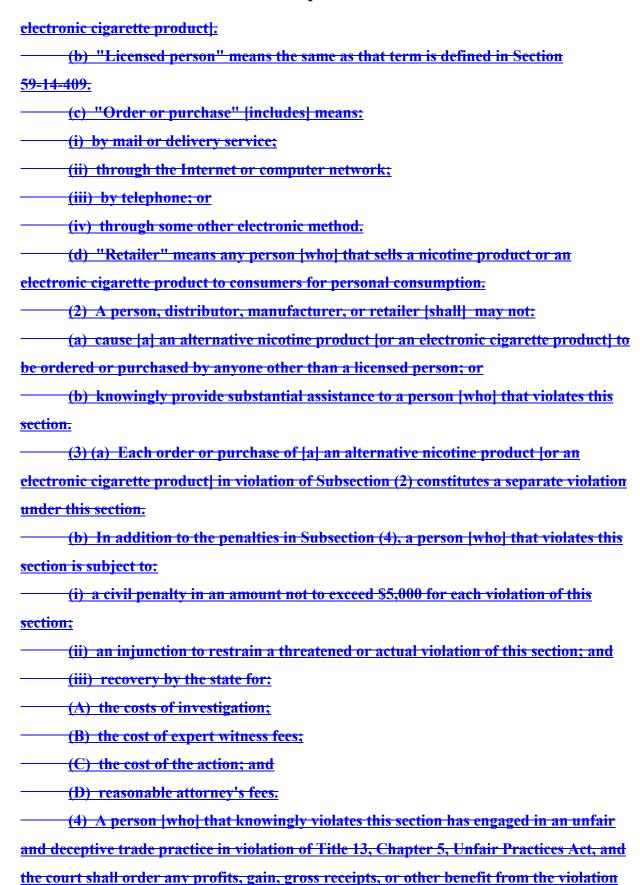
 Restricted Account is insufficient to cover the distributions described in Subsection (3)(a), the distribution amounts shall be adjusted proportionately.
- (4) (a) The local health departments shall use the money received in accordance with Subsection (3)(a) for enforcing:
 - (i) the regulation provisions 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 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 $\frac{\{12\}}{2}$. Section $\frac{\{59-14-808\}}{59-14-809}$ is $\frac{\{amended\}}{2}$ 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



- 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:

 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} Tax Restricted

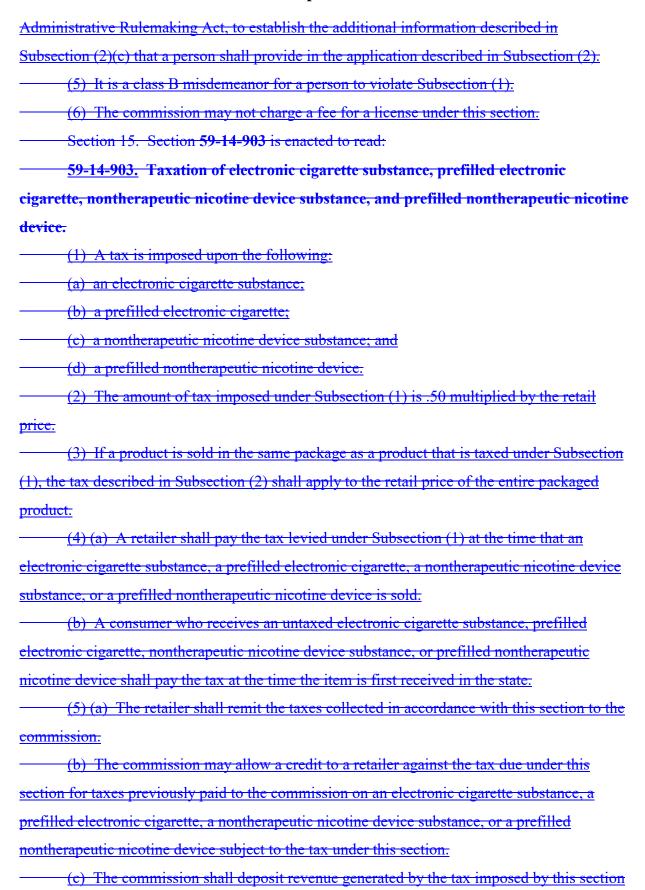
 Account under Section 59-14-807;
- (d) impacts of a lack of federal regulation of electronic {cigarette product or a nontherapeutic nicotine product.
- (2) "Retail price" means the amount charged by a retailer for} cigarettes on enforcement and compliance efforts; and
- (e) potential impacts on compliance 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}.

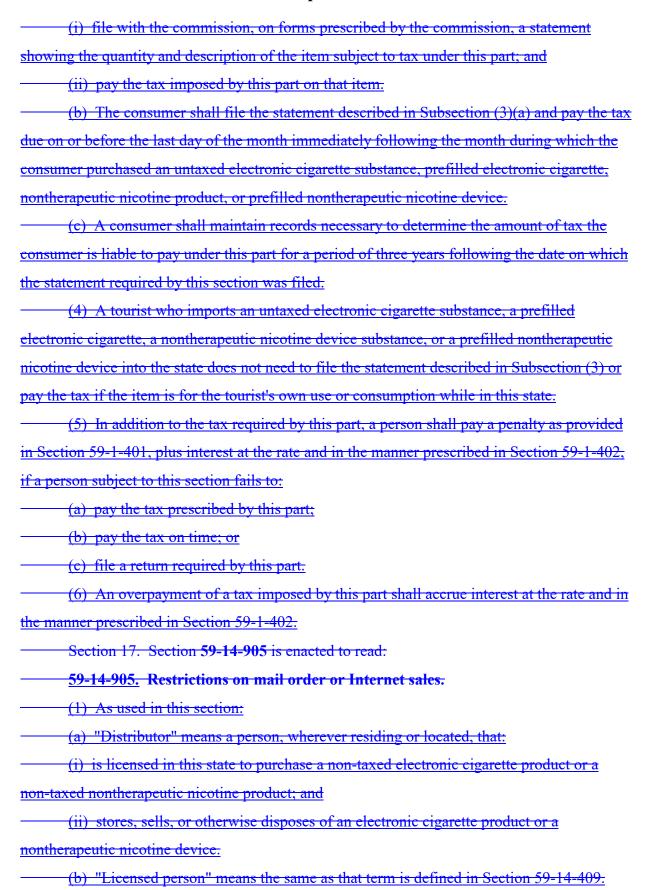
- ({2}3) The commission shall {issue a license to sell an electronic cigarette product or a nontherapeutic nicotine product to a person that submits an application, on a form created by the commission, that includes:
 - (a) the person's name;
- (b) the address of the location permitted under Section 26-62-201 where the person will sell an electronic eigarette 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

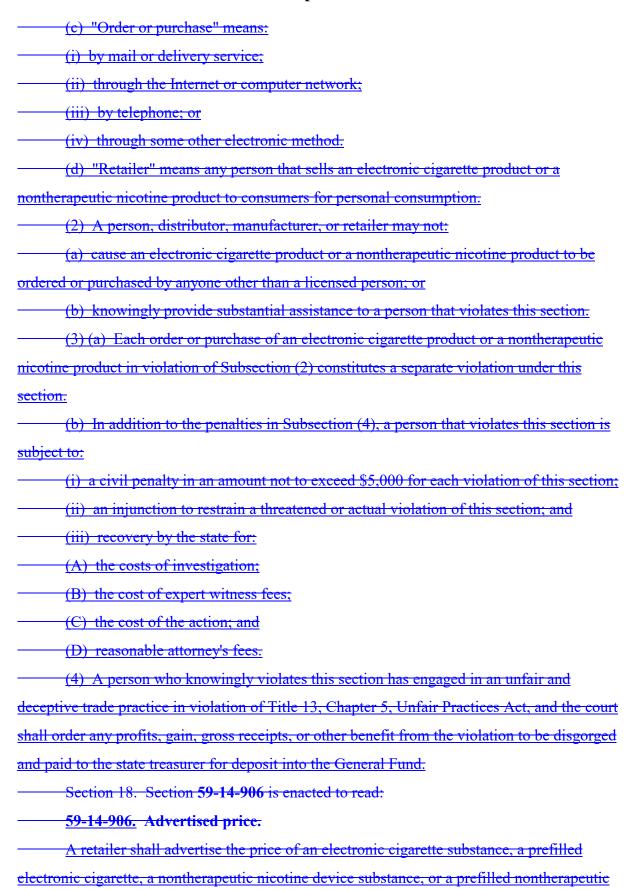
 Committee on or before the September interim meeting.
- (4) The commission shall report the commission's findings and recommendations on the study item described in Subsection (2) is:
 - (a) valid only at one fixed business address;
 - (b) valid for three years;
 - (c) valid only for a physical location; and
- (d) renewable if a licensee meets the criteria for licensing}(e) to the Revenue and Taxation Interim Committee on or before the September 2023 interim meeting.
 - Section 3. Coordinating S.B. 263 with H.B. 460 -- Technical amendments.
- If this S.B. 263 and H.B. 460, Settlement Fund Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:
 - (1) modify Subsection 59-14-807(3)(b) in this S.B. 263 to read:
- "(b) If the amount in the Electronic Cigarette Substance and Nicotine Product Proceeds

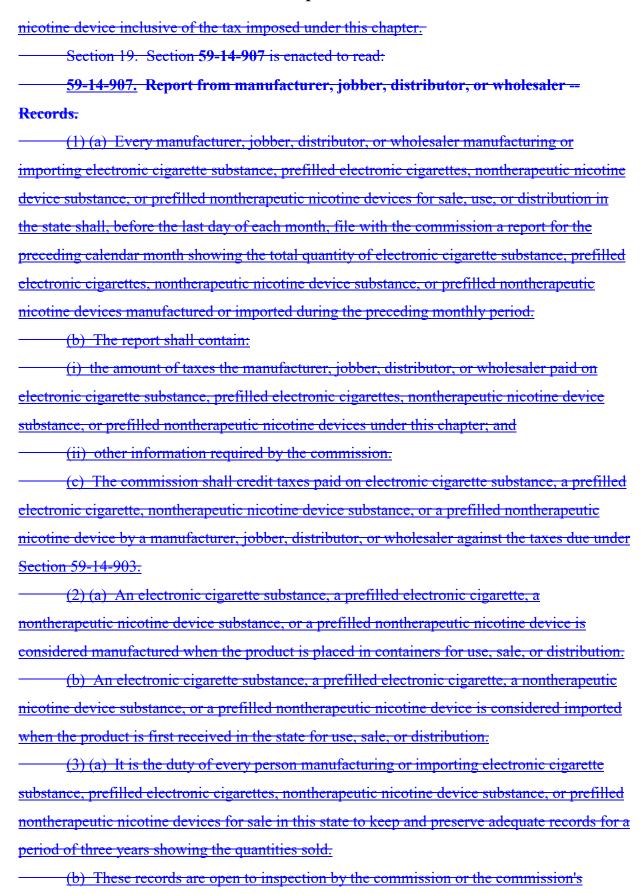
 Restricted Account is insufficient to cover the distributions described in Subsection (3)(a), the distribution amounts shall be adjusted proportionately."; and
 - (2) modify Subsection 59-14-809(2)(c) in this S.B. 263 to read:
- "(c) the sufficiency of collections of the tax imposed by this part to fund distributions from the Electronic Cigarette Substance and Nicotine Product Proceeds Restricted Account under Section 59-14-807;".
- { (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah



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 -- 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 eigarette substance, prefilled electronic eigarette, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine device for use or other consumption shall:







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

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