

FLAVORED TOBACCO RESTRICTIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits the distribution of certain flavored tobacco and similar products.

Highlighted Provisions:

This bill:

▶ prohibits the distribution of all flavored tobacco and similar products except for the following flavors:

- tobacco;
- mint; and
- menthol.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-41.6, as last amended by Laws of Utah 2023, Chapter 327

17-50-333, as last amended by Laws of Utah 2023, Chapter 327

53-7-404, as last amended by Laws of Utah 2008, Chapter 216

76-10-101, as last amended by Laws of Utah 2023, Chapter 330

76-10-111, as last amended by Laws of Utah 2020, Chapters 302, 347



28 76-10-112, as last amended by Laws of Utah 2020, Chapter 302

29 76-10-113, as enacted by Laws of Utah 2020, Chapter 302

30 76-10-116, as enacted by Laws of Utah 2020, Chapter 302

31

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

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

34 **10-8-41.6. Regulation of retail tobacco specialty business.**

35 (1) As used in this section:

36 (a) "Community location" means:

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

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

39 (iii) a trade or technical school;

40 (iv) a church;

41 (v) a public library;

42 (vi) a public playground;

43 (vii) a public park;

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

45 (ix) a public recreational facility;

46 (x) a public arcade; or

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

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

49 Section 26B-1-201.

50 (c) "Electronic cigarette product" means the same as that term is defined in Section

51 76-10-101.

52 [~~(d) "Flavored electronic cigarette product" means the same as that term is defined in~~

53 ~~Section 76-10-101.~~]

54 [~~(e)~~] (d) "Licensee" means a person licensed under this section to conduct business as a
55 retail tobacco specialty business.

56 [~~(f)~~] (e) "Local health department" means the same as that term is defined in Section

57 26A-1-102.

58 [~~(g)~~] (f) "Nicotine product" means the same as that term is defined in Section

59 76-10-101.

60 ~~[(h)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in
61 which:

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

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

66 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
67 tobacco products, electronic cigarette products, or nicotine products;

68 (iv) the commercial establishment:

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

70 (B) causes a reasonable person to believe the commercial establishment is a retail
71 tobacco specialty business; or

72 ~~[(v) any flavored electronic cigarette product is sold; or]~~

73 ~~[(vi)]~~ (v) the retail space features a self-service display for tobacco products, electronic
74 cigarette products, or nicotine products.

75 ~~[(h)]~~ (h) "Self-service display" means the same as that term is defined in Section

76 76-10-105.1.

77 ~~[(i)]~~ (i) "Tobacco product" means:

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

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

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

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

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

88 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for
89 a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty

90 business is located within:

- 91 (i) 1,000 feet of a community location;
- 92 (ii) 600 feet of another retail tobacco specialty business; or
- 93 (iii) 600 feet from property used or zoned for:
 - 94 (A) agriculture use; or
 - 95 (B) residential use.

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

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

103 (a) a valid permit for a retail tobacco specialty business issued under Title 26B,
104 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
105 local health department having jurisdiction over the area in which the retail tobacco specialty
106 business is located; and

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

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

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

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

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

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

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

- 121 (ii) if a licensee violates federal law or federal regulations restricting the sale and
122 distribution of tobacco products or electronic cigarette products to protect children and
123 adolescents;
- 124 (iii) upon the recommendation of the department or a local health department under
125 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine
126 Products; or
- 127 (iv) under any other provision of state law or local ordinance.
- 128 (7) (a) A retail tobacco specialty business is exempt from Subsection (4) if:
- 129 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
130 license to conduct business as a retail tobacco specialty business;
- 131 (ii) the retail tobacco specialty business is operating in a municipality in accordance
132 with all applicable laws except for the requirement in Subsection (4); and
- 133 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
134 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
- 135 (b) A retail tobacco specialty business may maintain an exemption under Subsection
136 (7)(a) if:
- 137 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
138 or permanent revocation;
- 139 (ii) the retail tobacco specialty business does not close for business or otherwise
140 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
141 more than 60 consecutive days;
- 142 (iii) the retail tobacco specialty business does not substantially change the business
143 premises or business operation; and
- 144 (iv) the retail tobacco specialty business maintains the right to operate under the terms
145 of other applicable laws, including:
- 146 (A) Section [26B-7-503](#);
- 147 (B) zoning ordinances;
- 148 (C) building codes; and
- 149 (D) the requirements of the license described in Subsection (7)(a)(i).
- 150 (c) A retail tobacco specialty business that does not qualify for an exemption under
151 Subsection (7)(a) is exempt from Subsection (4) if:

152 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
153 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26B,
154 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
155 local health department having jurisdiction over the area in which the retail tobacco specialty
156 business is located;

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

159 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
160 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

176 (A) Section [26B-7-503](#);

177 (B) zoning ordinances;

178 (C) building codes; and

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

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

183 specialty business:

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

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

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

190 **17-50-333. Regulation of retail tobacco specialty business.**

191 (1) As used in this section:

192 (a) "Community location" means:

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

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

195 (iii) a trade or technical school;

196 (iv) a church;

197 (v) a public library;

198 (vi) a public playground;

199 (vii) a public park;

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

201 (ix) a public recreational facility;

202 (x) a public arcade; or

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

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

205 Section 26B-1-201.

206 (c) "Electronic cigarette product" means the same as that term is defined in Section

207 76-10-101.

208 [~~(d)~~ "Flavored electronic cigarette product" means the same as that term is defined in

209 Section ~~76-10-101~~.]

210 [~~(e)~~] (d) "Licensee" means a person licensed under this section to conduct business as a

211 retail tobacco specialty business.

212 [~~(f)~~] (e) "Local health department" means the same as that term is defined in Section

213 26A-1-102.

214 ~~[(g)]~~ (f) "Nicotine product" means the same as that term is defined in Section
215 76-10-101.

216 ~~[(h)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in
217 which:

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

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

222 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
223 tobacco products, electronic cigarette products, or nicotine products;

224 (iv) the commercial establishment:

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

226 (B) causes a reasonable person to believe the commercial establishment is a retail
227 tobacco specialty business; or

228 ~~[(v) any flavored electronic cigarette product is sold; or]~~

229 ~~[(vi)]~~ (v) the retail space features a self-service display for tobacco products, electronic
230 cigarette products, or nicotine products.

231 ~~[(i)]~~ (h) "Self-service display" means the same as that term is defined in Section
232 76-10-105.1.

233 ~~[(j)]~~ (i) "Tobacco product" means:

234 (i) the same as that term is defined in Section 76-10-101; or

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

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

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

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

244 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a

245 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
246 business is located within:

- 247 (i) 1,000 feet of a community location;
248 (ii) 600 feet of another retail tobacco specialty business; or
249 (iii) 600 feet from property used or zoned for:

- 250 (A) agriculture use; or
251 (B) residential use.

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

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

259 (a) a valid permit for a retail tobacco specialty business issued under Title 26B,
260 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
261 local health department having jurisdiction over the area in which the retail tobacco specialty
262 business is located; and

263 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
264 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; or
265 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
266 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an
267 electronic cigarette product or a nicotine product.

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

269 (i) requires a county to issue a retail tobacco specialty business license; or
270 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
271 a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

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

279 (iii) upon the recommendation of the department or a local health department under
280 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine
281 Products; or

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

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

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

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

289 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
290 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

302 (A) [~~Title 26, Chapter 38, Utah Indoor Clean Air Act~~] [26B-7-503](#);

303 (B) zoning ordinances;

304 (C) building codes; and

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

306 (c) A retail tobacco specialty business that does not qualify for an exemption under

307 Subsection (7)(a) is exempt from Subsection (4) if:

308 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
309 general tobacco retailer permit or a retail tobacco specialty business permit under [~~Title 26,~~
310 ~~Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit~~] Title 26B,
311 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
312 local health department having jurisdiction over the area in which the retail tobacco specialty
313 business is located;

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

316 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
317 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

333 (A) [~~Title 26, Chapter 38, Utah Indoor Clean Air Act~~] [26B-7-503](#);

334 (B) zoning ordinances;

335 (C) building codes; and

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

337 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is

338 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
339 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
340 specialty business:

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

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

346 Section 3. Section **53-7-404** is amended to read:

347 **53-7-404. Certification and product change -- Restricted account created.**

348 (1) Each manufacturer shall submit to the state fire marshal a written certification
349 attesting that:

350 (a) each cigarette listed in the certification has been tested in accordance with Section
351 [53-7-403](#); and

352 (b) each cigarette listed in the certification meets the performance standard set forth in
353 Subsection [53-7-403](#)(2)(c).

354 (2) Each cigarette listed in the certification shall be described with the following
355 information:

- 356 (a) brand, or trade name on the package;
- 357 (b) style, such as light or ultra light;
- 358 (c) length in millimeters;
- 359 (d) circumference in millimeters;
- 360 (e) flavor, such as menthol [~~or chocolate~~], if applicable;
- 361 (f) filter or nonfilter;
- 362 (g) package description, such as soft pack or box;
- 363 (h) marking approved in accordance with Section [53-7-405](#);
- 364 (i) the name, address, and telephone number of the laboratory, if different than the
365 manufacturer that conducted the test; and
- 366 (j) the date that the testing occurred.

367 (3) The certifications shall be made available to the attorney general for purposes
368 consistent with this part and the State Tax Commission for the purposes of ensuring

369 compliance with this section.

370 (4) Each cigarette certified under this section shall be recertified every three years.

371 (5) For each cigarette listed in a certification, a manufacturer shall pay to the state fire
372 marshal a \$250 fee. The state fire marshal is authorized to annually adjust this fee to ensure it
373 defrays the actual costs of the processing, testing, enforcement, and oversight activities
374 required by this part.

375 (6) (a) Beginning July 1, 2008, there is created a restricted account within the General
376 Fund called the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act
377 Enforcement Account."

378 (b) The account created in Subsection (6)(a) shall consist of all certification fees
379 submitted by manufacturers.

380 (c) (i) The state treasurer shall invest money in the account according to Title 51,
381 Chapter 7, State Money Management Act.

382 (ii) The Division of Finance shall deposit interest or other earnings derived from
383 investment of account money into the General Fund.

384 (d) Upon appropriations from the Legislature, money from the account created in
385 Subsection (6)(a) shall be used by the state fire marshal solely to support processing, testing,
386 enforcement, and oversight activities under this part.

387 (7) (a) If a manufacturer has certified a cigarette pursuant to this section, and thereafter
388 makes any change to the certified cigarette that is likely to alter its compliance with the reduced
389 cigarette ignition propensity standards required by this part, that cigarette shall not be sold or
390 offered for sale in this state until the manufacturer:

391 (i) retests the cigarette in accordance with the testing standards set forth in Section
392 [53-7-403](#); and

393 (ii) maintains records of that retesting as required by Section [53-7-403](#).

394 (b) Any altered cigarette which does not meet the performance standard set forth in
395 Section [53-7-403](#) may not be sold in this state.

396 Section 4. Section **76-10-101** is amended to read:

397 **76-10-101. Definitions.**

398 As used in this part:

399 (1) (a) "Alternative nicotine product" means a product, other than a cigarette, a

400 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a
401 tobacco product, that:

- 402 (i) contains nicotine;
- 403 (ii) is intended for human consumption;
- 404 (iii) is not purchased with a prescription from a licensed physician; and
- 405 (iv) is not approved by the United States Food and Drug Administration as nicotine
406 replacement therapy.

407 (b) "Alternative nicotine product" includes:

- 408 (i) pure nicotine;
- 409 (ii) snortable nicotine;
- 410 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and
- 411 (iv) nicotine-laced food and beverage.

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

414 (2) "Cigar" means a product that contains nicotine, is intended to be burned under
415 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
416 any substance containing tobacco, other than any roll of tobacco that is a cigarette.

417 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or
418 burned under ordinary conditions of use, and consists of:

- 419 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- 420 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
421 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
422 be offered to, or purchased by, consumers as a cigarette described in Subsection (3)(a).

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

- 424 (i) any electronic oral device:
 - 425 (A) that provides an aerosol or a vapor of nicotine or other substance; and
 - 426 (B) which simulates smoking through the use or inhalation of the device;
- 427 (ii) a component of the device described in Subsection (4)(a)(i); or
- 428 (iii) an accessory sold in the same package as the device described in Subsection
429 (4)(a)(i).

430 (b) "Electronic cigarette" includes an oral device that is:

- 431 (i) composed of a heating element, battery, or electronic circuit; and
432 (ii) marketed, manufactured, distributed, or sold as:
433 (A) an e-cigarette;
434 (B) an e-cigar;
435 (C) an e-pipe; or
436 (D) any other product name or descriptor, if the function of the product meets the
437 definition of Subsection (4)(a).
- 438 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is
439 defined in Section [26B-4-201](#).
- 440 (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
441 substance, or a prefilled electronic cigarette.
- 442 (6) "Electronic cigarette substance" means any substance, including liquid containing
443 nicotine, used or intended for use in an electronic cigarette.
- 444 ~~[(7) (a) "Flavored electronic cigarette product" means an electronic cigarette product
445 that has a taste or smell that is distinguishable by an ordinary consumer either before or during
446 use or consumption of the electronic cigarette product.]~~
- 447 ~~[(b) "Flavored electronic cigarette product" includes an electronic cigarette product that
448 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
449 beverage, herb, or spice.]~~
- 450 ~~[(c) "Flavored electronic cigarette product" does not include an electronic cigarette
451 product that:]~~
- 452 ~~[(i) has a taste or smell of only tobacco, mint, or menthol; or]~~
- 453 ~~[(ii) has been approved by an order granting a premarket tobacco product application of
454 the electronic cigarette product by the United States Food and Drug Administration under 21
455 U.S.C. Sec. 387j(c)(1)(A)(i).]~~
- 456 ~~[(8)] (7) "Nicotine" means a poisonous, nitrogen containing chemical that is made
457 synthetically or derived from tobacco or other plants.~~
- 458 ~~[(9)] (8) "Nicotine product" means an alternative nicotine product or a nontherapeutic
459 nicotine product.~~
- 460 ~~[(10)] (9) (a) "Nontherapeutic nicotine device" means a device that:~~
- 461 (i) has a pressurized canister that is used to administer nicotine to the user through

462 inhalation or intranasally;

463 (ii) is not purchased with a prescription from a licensed physician; and

464 (iii) is not approved by the United States Food and Drug Administration as nicotine
465 replacement therapy.

466 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
467 nontherapeutic nicotine nasal spray.

468 [~~(H)~~] (10) "Nontherapeutic nicotine device substance" means a substance that:

469 (a) contains nicotine;

470 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;

471 (c) is not purchased with a prescription from a licensed physician; and

472 (d) is not approved by the United States Food and Drug Administration as nicotine
473 replacement therapy.

474 [~~(I)~~] (11) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device,
475 a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

476 [~~(J)~~] (12) "Place of business" includes:

477 (a) a shop;

478 (b) a store;

479 (c) a factory;

480 (d) a public garage;

481 (e) an office;

482 (f) a theater;

483 (g) a recreation hall;

484 (h) a dance hall;

485 (i) a poolroom;

486 (j) a cafe;

487 (k) a cafeteria;

488 (l) a cabaret;

489 (m) a restaurant;

490 (n) a hotel;

491 (o) a lodging house;

492 (p) a streetcar;

493 (q) a bus;

494 (r) an interurban or railway passenger coach;

495 (s) a waiting room; and

496 (t) any other place of business.

497 [~~(14)~~] (13) "Prefilled electronic cigarette" means an electronic cigarette that is sold
498 prefilled with an electronic cigarette substance.

499 [~~(15)~~] (14) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine
500 device that is sold prefilled with a nontherapeutic nicotine device substance.

501 [~~(16)~~] (15) "Retail tobacco specialty business" means the same as that term is defined
502 in Section [26B-7-501](#).

503 [~~(17)~~] (16) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or
504 other lighted smoking equipment.

505 [~~(18)~~] (17) (a) "Tobacco paraphernalia" means equipment, product, or material of any
506 kind that is used, intended for use, or designed for use to package, repack, store, contain,
507 conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette
508 substance, or a nontherapeutic nicotine device substance into the human body.

509 (b) "Tobacco paraphernalia" includes:

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

512 (ii) water pipes;

513 (iii) carburetion tubes and devices;

514 (iv) smoking and carburetion masks;

515 (v) roach clips, meaning objects used to hold burning material, such as a cigarette, that
516 has become too small or too short to be held in the hand;

517 (vi) chamber pipes;

518 (vii) carburetor pipes;

519 (viii) electric pipes;

520 (ix) air-driven pipes;

521 (x) chillums;

522 (xi) bongs; and

523 (xii) ice pipes or chillers.

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

525 [~~(19)~~] (18) "Tobacco product" means:

526 (a) a cigar;

527 (b) a cigarette; or

528 (c) tobacco in any form, including:

529 (i) chewing tobacco; and

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

531 [~~(20)~~] (19) "Tobacco retailer" means:

532 (a) a general tobacco retailer, as that term is defined in Section 26B-7-501; or

533 (b) a retail tobacco specialty business.

534 Section 5. Section 76-10-111 is amended to read:

535 **76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarette**

536 **products -- Exceptions.**

537 (1) The Legislature finds that:

538 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
539 use those products because research indicates that they may cause mouth or oral cancers;

540 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

541 (c) the use of electronic cigarette products may lead to unhealthy behavior such as the
542 use of tobacco products; and

543 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
544 the interest of the health of the citizens of this state.

545 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
546 wholesaler, and retailer to:

547 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
548 electronic cigarette product in this state;

549 (ii) sell, offer for sale, or furnish any electronic cigarette product at less than the cost,
550 including the amount of any applicable tax, of the product to the manufacturer, wholesaler, or
551 retailer; or

552 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette product for
553 free or at a lower price because the recipient of the electronic cigarette product makes another
554 purchase.

555 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
556 (2)(a)(ii) does not include a discount for:

557 (i) a physical manufacturer coupon:

558 (A) that is surrendered to the wholesaler or retailer at the time of sale; and

559 (B) for which the manufacturer will reimburse the wholesaler or the retailer for the full
560 amount of the discount described in the manufacturer coupon and provided to the purchaser;

561 (ii) a rebate that will be paid to the manufacturer, the wholesaler, or the retailer for the
562 full amount of the rebate provided to the purchaser; or

563 (iii) a promotional fund that will be paid to the manufacturer, the wholesaler, or the
564 retailer for the full amount of the promotional fund provided to the purchaser.

565 (c) Any individual who violates this section is guilty of:

566 (i) a class C misdemeanor for the first offense; and

567 (ii) a class B misdemeanor for any subsequent offense.

568 (3) [~~Smokeless~~] Subject to Section 76-10-113, smokeless tobacco, chewing tobacco, or
569 an electronic cigarette product may be distributed to adults without charge at professional
570 conventions where the general public is excluded.

571 Section 6. Section 76-10-112 is amended to read:

572 **76-10-112. Prohibition of distribution of a tobacco product -- Exceptions.**

573 (1) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
574 or retailer to give or distribute a tobacco product in this state without charge.

575 (2) An individual who violates this subsection is guilty of:

576 (a) a class C misdemeanor for the first offense; and

577 (b) a class B misdemeanor for any subsequent offense.

578 (3) [~~A~~] Subject to Section 76-10-113, a tobacco product may be distributed to an adult
579 without charge at a professional convention where the general public is excluded.

580 (4) [~~The~~] Subject to Section 76-10-113, the prohibition described in Subsection (1)
581 does not apply to a tobacco retailer, a manufacturer, or a distributor that gives a tobacco
582 product to an individual who is 21 years old or older upon the individual's purchase of a
583 tobacco product.

584 Section 7. Section 76-10-113 is amended to read:

585 **76-10-113. Prohibition on distribution of flavored electronic cigarette, nicotine,**

586 **and tobacco products.**

587 (1) [~~It is unlawful for a tobacco retailer that is not a retail tobacco specialty business to~~
588 ~~give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any~~
589 ~~person.] It is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any
590 person, the following products that have a taste or smell other than tobacco, mint, or menthol:~~

591 (a) an electronic cigarette product;

592 (b) a nicotine product; and

593 (c) a tobacco product.

594 (2) An individual who violates this section is guilty of:

595 (a) a class C misdemeanor for the first offense; and

596 (b) a class B misdemeanor for any subsequent offense.

597 Section 8. Section **76-10-116** is amended to read:

598 **76-10-116. Ordinances, rules, and regulations.**

599 (1) Except as provided in Subsection (2), an ordinance, rule, or regulation adopted by a
600 governing body of a political subdivision of the state or a state agency is superseded if:

601 (a) the ordinance, rule, or regulation affects:

602 (i) the minimum age of sale for a tobacco product, an electronic cigarette product, or
603 tobacco paraphernalia;

604 (ii) the provision or sale of a tobacco product, an electronic cigarette product, or
605 tobacco paraphernalia;

606 (iii) the flavoring of a tobacco product, a nicotine product, or an electronic cigarette
607 product;

608 (iv) the purchase or possession of a tobacco product, an electronic cigarette product, or
609 tobacco paraphernalia; or

610 (v) the placement or display of a tobacco product or an electronic cigarette product;

611 and

612 (b) the ordinance, rule, or regulation is not essentially identical to any state statute
613 relating to the applicable subject described in Subsection (1)(a).

614 (2) A governing body of a political subdivision of the state or a state agency may adopt
615 an ordinance, rule, or regulation on a subject described in Subsections (1)(a)(i) through (v) if
616 the governing body of a political subdivision of the state or a state agency is authorized by

617 statute to adopt the ordinance, rule, or regulation.

618 (3) Subsection (1) does not apply to the adoption or enforcement of a land use
619 ordinance by a municipal or county government.

620 Section 9. **Effective date.**

621 This bill takes effect on May 1, 2024.