

Senator Jen Plumb proposes the following substitute bill:

ELECTRONIC CIGARETTE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ prohibits the sale of electronic cigarette products that have not received market authorization or are pending market authorization from the federal Food and Drug Administration;

- ▶ prohibits the sale of flavored electronic cigarette products; and

- ▶ creates a registry for electronic cigarette products.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

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

26B-7-505, as renumbered and amended by Laws of Utah 2023, Chapter 308



26 **59-14-807**, as last amended by Laws of Utah 2023, Chapters 98, 300, 329, and 531 and
27 last amended by Coordination Clause, Laws of Utah 2023, Chapter 531

28 **76-10-101**, as last amended by Laws of Utah 2023, Chapter 330

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

30 ENACTS:

31 **59-14-810**, Utah Code Annotated 1953



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

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

35 **10-8-41.6. Regulation of retail tobacco specialty business.**

36 (1) As used in this section:

37 (a) "Community location" means:

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

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

40 (iii) a trade or technical school;

41 (iv) a church;

42 (v) a public library;

43 (vi) a public playground;

44 (vii) a public park;

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

46 (ix) a public recreational facility;

47 (x) a public arcade; or

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

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

50 Section **26B-1-201**.

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

52 **76-10-101**.

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

54 ~~Section **76-10-101**.]~~

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

56 retail tobacco specialty business.

57 ~~[(f)]~~ (e) "Local health department" means the same as that term is defined in Section
58 26A-1-102.

59 ~~[(g)]~~ (f) "Nicotine product" means the same as that term is defined in Section
60 76-10-101.

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

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

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

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

69 (iv) the commercial establishment:

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

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

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

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

76 ~~[(i)]~~ (h) "Self-service display" means the same as that term is defined in Section
77 76-10-105.1.

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

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

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

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

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

87 (b) A municipality may only issue a retail tobacco specialty business license to a

88 person if the person complies with the provisions of Subsections (4) and (5).

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

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

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

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

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

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

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

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

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

118 (b) A municipality may suspend or revoke a retail tobacco specialty business license

119 issued under this section:

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

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

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

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

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

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

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

134 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
135 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

148 (B) zoning ordinances;

149 (C) building codes; and

- 150 (D) the requirements of the license described in Subsection (7)(a)(i).
- 151 (c) A retail tobacco specialty business that does not qualify for an exemption under
152 Subsection (7)(a) is exempt from Subsection (4) if:
- 153 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
154 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26B,
155 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
156 local health department having jurisdiction over the area in which the retail tobacco specialty
157 business is located;
- 158 (ii) the retail tobacco specialty business is operating in the municipality in accordance
159 with all applicable laws except for the requirement in Subsection (4); and
- 160 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
161 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
- 162 (d) Except as provided in Subsection (7)(e), a retail tobacco specialty business may
163 maintain an exemption under Subsection (7)(c) if:
- 164 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
165 retail tobacco specialty business permit from the local health department having jurisdiction
166 over the area in which the retail tobacco specialty business is located;
- 167 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
168 or permanent revocation;
- 169 (iii) the retail tobacco specialty business does not close for business or otherwise
170 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
171 more than 60 consecutive days;
- 172 (iv) the retail tobacco specialty business does not substantially change the business
173 premises or business operation as the business existed when the retail tobacco specialty
174 business received a permit under Subsection (7)(d)(i); and
- 175 (v) the retail tobacco specialty business maintains the right to operate under the terms
176 of other applicable laws, including:
- 177 (A) Section [26B-7-503](#);
- 178 (B) zoning ordinances;
- 179 (C) building codes; and
- 180 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

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

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

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

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

191 **17-50-333. Regulation of retail tobacco specialty business.**

192 (1) As used in this section:

193 (a) "Community location" means:

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

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

196 (iii) a trade or technical school;

197 (iv) a church;

198 (v) a public library;

199 (vi) a public playground;

200 (vii) a public park;

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

202 (ix) a public recreational facility;

203 (x) a public arcade; or

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

205 (b) "Department" means the Department of Health and Human Services created in
206 Section **26B-1-201**.

207 (c) "Electronic cigarette product" means the same as that term is defined in Section
208 **76-10-101**.

209 [~~(d) "Flavored electronic cigarette product" means the same as that term is defined in~~
210 ~~Section **76-10-101**.]~~

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

212 retail tobacco specialty business.

213 ~~[(f)]~~ (e) "Local health department" means the same as that term is defined in Section
214 26A-1-102.

215 ~~[(g)]~~ (f) "Nicotine product" means the same as that term is defined in Section
216 76-10-101.

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

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

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

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

225 (iv) the commercial establishment:

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

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

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

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

232 ~~[(i)]~~ (h) "Self-service display" means the same as that term is defined in Section
233 76-10-105.1.

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

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

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

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

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

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

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

- 248 (i) 1,000 feet of a community location;
- 249 (ii) 600 feet of another retail tobacco specialty business; or
- 250 (iii) 600 feet from property used or zoned for:
 - 251 (A) agriculture use; or
 - 252 (B) residential use.

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

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

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

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

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

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

273 (b) A county may suspend or revoke a retail tobacco specialty business license issued

274 under this section:

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

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

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

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

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

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

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

290 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
291 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

304 (B) zoning ordinances;

- 305 (C) building codes; and
- 306 (D) the requirements of the license described in Subsection (7)(a)(i).
- 307 (c) A retail tobacco specialty business that does not qualify for an exemption under
- 308 Subsection (7)(a) is exempt from Subsection (4) if:
- 309 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
- 310 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
- 311 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
- 312 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;
- 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 **26B-7-505** is amended to read:

347 **26B-7-505. Electronic cigarette products -- Labeling -- Requirements to sell --**
348 **Advertising -- Labeling of nicotine products containing nicotine.**

349 (1) The department shall, in consultation with a local health department and with input
350 from members of the public, establish by rule made in accordance with Title 63G, Chapter 3,
351 Utah Administrative Rulemaking Act, the requirements to sell an electronic cigarette substance
352 that is not a manufacturer sealed electronic cigarette substance regarding:

- 353 (a) labeling;
- 354 (b) nicotine content;
- 355 (c) packaging; and
- 356 (d) product quality.

357 (2) On or before January 1, 2021, the department shall, in consultation with a local
358 health department and with input from members of the public, establish by rule made in
359 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements
360 to sell a manufacturer sealed electronic cigarette product regarding:

- 361 (a) labeling;
- 362 (b) nicotine content;
- 363 (c) packaging; and
- 364 (d) product quality.

365 (3) (a) A person may not sell an electronic cigarette substance unless the electronic
366 cigarette substance complies with the requirements established by the department under

367 Subsection (1).

368 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic
369 cigarette product unless the manufacturer sealed electronic cigarette product complies with the
370 requirements established by the department under Subsection (2).

371 (c) Notwithstanding Subsections (3)(a) and (3)(b), a person may not sell an electronic
372 cigarette product that is not a premarket authorized or pending electronic cigarette product as
373 that term is defined in Section [76-10-101](#).

374 (4) (a) A local health department may not enact a rule or regulation regarding
375 electronic cigarette substance labeling, nicotine content, packaging, or product quality that is
376 not identical to the requirements established by the department under Subsections (1) and (2).

377 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule
378 or regulation regarding electronic cigarette substance manufacturing.

379 (c) A local health department may not enact a rule or regulation regarding a
380 manufacturer sealed electronic cigarette product.

381 (5) A person may not advertise an electronic cigarette product as a tobacco cessation
382 device.

383 (6) ~~(a)~~ Any nicotine product shall contain the statement described in Subsection ~~[(7)]~~
384 ~~(6)(b)~~ if the nicotine product:

385 ~~[(a)]~~ (i) ~~(A)~~ is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related
386 federal regulations; or

387 ~~[(i)]~~ ~~(B)~~ is not otherwise required under federal or state law to contain a nicotine
388 warning; and

389 ~~[(b)]~~ ~~(ii)~~ contains nicotine.

390 ~~[(7)]~~ ~~(b)~~ A statement shall appear on the exterior packaging of a nicotine product
391 described in Subsection (6)~~(a)~~ as follows:

392 "This product contains nicotine."

393 Section 4. Section **59-14-807** is amended to read:

394 **59-14-807. Electronic Cigarette Substance and Nicotine Product Proceeds**
395 **Restricted Account.**

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

398 (2) The Electronic Cigarette Substance and Nicotine Product Proceeds Restricted
399 Account consists of:

400 (a) revenue collected from the tax imposed by Section 59-14-804;

401 (b) fees and penalties collected under Section 59-14-810;

402 ~~[(b)]~~ (c) all money received by the attorney general or the Department of Commerce as
403 a result of any judgment, settlement, or compromise of claims pertaining to alleged violations
404 of law related to the manufacture, marketing, distribution, or sale of electronic cigarette
405 products, as defined in Section 76-10-101:

406 (i) if the total amount of the judgment, settlement, or compromise received by the state
407 exceeds \$1,000,000; and

408 (ii) after reimbursement to the attorney general and the Department of Commerce for
409 expenses related to the matters described in Subsection ~~[(2)(b)]~~ (2)(c); and

410 ~~[(c)]~~ (d) amounts appropriated by the Legislature.

411 (3) (a) For each fiscal year and subject to appropriation by the Legislature, the Division
412 of Finance shall distribute from the Electronic Cigarette Substance and Nicotine Product
413 Proceeds Restricted Account:

414 (i) \$2,000,000, which shall be allocated to the local health departments by the
415 Department of Health and Human Services using the formula created in accordance with
416 Section 26A-1-116;

417 (ii) \$2,000,000 to the Department of Health and Human Services for statewide
418 cessation programs and prevention education;

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

422 (iv) \$3,000,000, which shall be allocated to the local health departments by the
423 Department of Health and Human Services using the formula created in accordance with
424 Section 26A-1-116;

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

426 ~~[and]~~

427 (vi) \$2,000,000 to the Department of Health and Human Services for alcohol, tobacco,
428 and other drug prevention, reduction, cessation, and control programs that promote unified

429 messages and make use of media outlets, including radio, newspaper, billboards, and
430 television[-]; and

431 (vii) to the commission, an amount equal to the amount deposited under Section
432 59-14-810.

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

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

438 (i) the regulation provisions described in Section 26B-7-505;

439 (ii) the labeling requirement described in Section 26B-7-505; and

440 (iii) the penalty provisions described in Section 26B-7-518.

441 (b) The Department of Health and Human Services shall use the money received in
442 accordance with Subsection (3)(a)(ii) for the Youth Electronic Cigarette, Marijuana, and Other
443 Drug Prevention Program created in Section 26B-1-428.

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

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

449 (i) (A) stipends for positive behaviors specialists as described in Subsection
450 53G-10-407(4)(a)(i);

451 (B) the cost of administering the positive behaviors plan as described in Subsection
452 53G-10-407(4)(a)(ii); and

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

455 (ii) a comprehensive prevention plan, as that term is defined in Section 53F-2-525.

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

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

458 (6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette
459 Substance and Nicotine Product Proceeds Restricted Account after the distribution described in

460 Subsection (3) may only be used for:

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

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

465 Section 5. Section **59-14-810** is enacted to read:

466 **59-14-810. Electronic cigarette product registry.**

467 (1) Beginning on July 1, 2024, every manufacturer of an electronic cigarette product
468 that is sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar
469 intermediary or intermediaries, shall certify under penalty of perjury on a form and in the
470 manner prescribed by the commission, that:

471 (a) the manufacturer agrees to comply with this section; and

472 (b) the electronic cigarette product is a premarket authorized or pending electronic
473 cigarette product as defined in Section [76-10-101](#).

474 (2) Each year, a manufacturer shall submit a certification form that separately lists each
475 electronic cigarette product that is sold in this state.

476 (3) (a) Each annual certification form shall include:

477 (i) the name of the electronic cigarette product, nicotine content level by percentage,
478 and any flavors contained in the product;

479 (ii) (A) a copy of the order granting a premarket tobacco product application of the
480 electronic cigarette product by the United States Food and Drug Administration under 21
481 U.S.C. Sec. 387j(c)(1)(A)(i); or

482 (B) evidence that the premarket tobacco product application for the electronic cigarette
483 product or nicotine product was submitted to the United States Food and Drug Administration
484 before September 9, 2020, and a final authorization or order has not yet taken effect; and

485 (iii) payment of an annual fee set by the commission for each electronic cigarette
486 product.

487 (b) In addition to the fee described in Subsection (3)(a)(iii), for an electronic cigarette
488 product's initial submission to the registry, the manufacture shall pay a fee set by the
489 commission for the electronic cigarette product.

490 (c) A manufacturer required to submit a certification form under this section shall

491 notify the commission within 30 days of any material change making the certification form no
492 longer accurate, including:

493 (i) the issuance or denial of a marketing authorization or other order by the United
494 States Food and Drug Administration under 21 U.S.C. Sect. 387j; or

495 (ii) any other order or action by the United States Food and Drug Administration or any
496 court that affects the ability of the electronic cigarette product to be introduced or delivered
497 into interstate commerce for commercial distribution in the United States.

498 (4) On or before September 1, 2024, the commission shall make publicly available on
499 the commission's website a registry that lists each electronic cigarette product manufacturer and
500 each electronic cigarette product for which certification forms have been submitted.

501 (5) (a) The commission shall provide manufacturers notice and an opportunity to cure
502 deficiencies before removing manufacturers or products from the registry.

503 (b) The commission may remove a product from the registry in accordance with Title
504 63G, Chapter 4, Administrative Procedures Act.

505 (6) (a) If a product is removed from the registry, each retailer, distributor, and
506 wholesaler shall have 30 days from the day on which the product is removed from the registry
507 to remove the product from any inventory and return the product to the manufacturer for
508 disposal.

509 (b) After the period described in Subsection (6)(a), any electronic cigarette product of a
510 manufacturer identified in the notice of removal are contraband and are subject to penalties
511 under Subsection (8) and seizure, forfeiture, and destruction under Subsection (9)(b).

512 (7) (a) Beginning on October 1, 2024, a person may not sell or offer for retail sale an
513 electronic cigarette product in this state that is not included in the registry.

514 (b) A manufacturer may not sell, either directly or through a distributor, wholesaler,
515 retailer, or similar intermediary or intermediaries, an electronic cigarette product in this state
516 that is not included in the registry.

517 (8) (a) A wholesaler, distributor, or retailer who sells or offers for retail sale an
518 electronic cigarette product in this state that is not included in the registry shall be subject to a
519 civil penalty of:

520 (i) \$1,000 for each product offered for sale in violation of this section; and

521 (ii) \$100 per day until the offending product is removed from the market or until the

522 offending product is properly listed on the registry.

523 (b) The commission shall suspend the person's license issued under Section [59-14-803](#)

524 for a violation of Subsection (8)(a) as follows:

525 (i) for a second violation within a 12-month period, at least 14 days;

526 (ii) for a third violation within a 12-month period, at least 60 days; or

527 (iii) for a fourth violation within a 12-month period, at least one year.

528 (c) A manufacturer whose electronic cigarette products are not listed in the registry and

529 are sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar

530 intermediary or intermediaries, is subject to a civil penalty of:

531 (i) \$1,000 for each product offered for retail sale in violation of this section; and

532 (ii) \$100 per day until the offending product is removed from the market or until the

533 offending product is properly listed on the registry.

534 (d) A manufacturer that falsely represents any information required by a certification

535 form described in this section shall be guilty of a class C misdemeanor for each false

536 representation.

537 (e) A repeated violation of this section shall constitute a deceptive act or practice as

538 provided in Sections [13-11-4](#) and [13-11a-3](#) and shall be subject to any remedies or penalties

539 available for a violation of those sections.

540 (9) (a) (i) The commission may examine the books, papers, and records of any

541 distributor, wholesaler, or retailer in this state, for the purpose of determining compliance with

542 this section.

543 (ii) The commission may make the inspections and examinations at any time during

544 ordinary business hours, and may inspect the premises and all desks, safes, vaults, and other

545 fixtures and furniture contained in or upon the premises for the purpose of ascertaining whether

546 an electronic cigarette product is held or possessed in violation of this section.

547 (iii) Unannounced follow-up examinations of all noncompliant distributors,

548 wholesalers, and retailers are required within 30 days after any violation of this section.

549 (iv) The commission shall publish the results of all examinations at least annually and

550 shall make the results available to the public on request.

551 (b) (i) Any electronic cigarette product offered for retail sale in violation of this section

552 is declared to be a contraband good and may be seized by the commission or the commission's

553 agents or employees, or by any law enforcement agency of this state if directed by the
 554 commission, without a warrant.

555 (ii) The cost of such seizure, forfeiture, and destruction shall be borne by the person
 556 from whom the products are confiscated.

557 (c) In an action brought under this section, the commission may recover reasonable
 558 expenses incurred in investigating and preparing the case, and attorney fees.

559 (10) (a) The commission shall disclose to the attorney general any information received
 560 under this section which is requested by the attorney general for purposes of determining
 561 compliance with and enforcing the provisions of this section.

562 (b) The commission and attorney general shall share with each other information
 563 received under this section, or corresponding laws of other states.

564 (11) (a) (i) ~~Ŝ~~ → [Subject to Subsection (11)(d)(ii), the] The ~~←~~Ŝ commission may not list a
 564a nonresident
 565 manufacturer of an electronic cigarette product in the registry unless:

566 (A) the nonresident manufacturer has registered to do business in the state as a foreign
 567 corporation or business entity; or

568 (B) the nonresident manufacturer appoints and maintains without interruption the
 569 services of an agent in this state to receive any service of process on behalf of the
 570 manufacturer.

571 (b) The nonresident manufacturer shall provide the name, address, telephone number
 572 of the agent to the commission.

573 (c) (i) A nonresident manufacturer shall provide notice to the commission 30 days
 574 before the termination of the authority of an agent and shall further provide proof to the
 575 satisfaction of the commission of the appointment of a new agent no less than five calendar
 576 days prior to the termination of an existing agent appointment.

577 (ii) In the event an agent terminates an agency appointment, the manufacturer shall
 578 notify the commission of the termination within five calendar days and shall include proof to
 579 the satisfaction of the commission of the appointment of a new agent.

580 Ŝ → ~~[(d) (i) Any nonresident manufacturer whose electronic cigarette products are sold in~~
 581 ~~this state who has not appointed and engaged the services of an agent as required by this~~
 582 ~~section shall be deemed to have appointed the lieutenant governor as the agent for service of~~
 583 ~~process.~~

584 ~~⊖(ii) The commission may not include a nonresident manufacturer in the registry if the~~
 585 ~~lieutenant governor is the manufacturer's agent.] ←Ŝ~~

586 (12) Before January 31 of each year, the commission shall provide a report to the
 587 Revenue and Taxation Interim Committee regarding:

- 588 (a) the status of the registry;
- 589 (b) manufacturers and products included in the registry;
- 590 (c) revenue and expenditures related to administration of this section; and
- 591 (d) enforcement activities undertaken pursuant to this section.

592 (13) All fees and penalties collected under this section shall be used for administration
 593 and enforcement of this section.

594 (14) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
 595 Administrative Rulemaking Act, to implement this section.

596 Section 6. Section **76-10-101** is amended to read:

597 **76-10-101. Definitions.**

598 As used in this part:

599 (1) (a) "Alternative nicotine product" means a product, other than a cigarette, a
 600 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a
 601 tobacco product, that:

- 602 (i) contains nicotine;
- 603 (ii) is intended for human consumption;
- 604 (iii) is not purchased with a prescription from a licensed physician; and
- 605 (iv) is not approved by the United States Food and Drug Administration as nicotine
 606 replacement therapy.

607 (b) "Alternative nicotine product" includes:

- 608 (i) pure nicotine;
- 609 (ii) snortable nicotine;
- 610 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and
- 611 (iv) nicotine-laced food and beverage.
- 612 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
 613 contains naturally occurring nicotine.

614 (2) "Cigar" means a product that contains nicotine, is intended to be burned under

615 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
616 any substance containing tobacco, other than any roll of tobacco that is a cigarette.

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

619 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

620 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
621 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
622 be offered to, or purchased by, consumers as a cigarette described in Subsection (3)(a).

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

624 (i) any electronic oral device:

625 (A) that provides an aerosol or a vapor of nicotine or other substance; and

626 (B) which simulates smoking through the use or inhalation of the device;

627 (ii) a component of the device described in Subsection (4)(a)(i); or

628 (iii) an accessory sold in the same package as the device described in Subsection

629 (4)(a)(i).

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

631 (i) composed of a heating element, battery, or electronic circuit; and

632 (ii) marketed, manufactured, distributed, or sold as:

633 (A) an e-cigarette;

634 (B) an e-cigar;

635 (C) an e-pipe; or

636 (D) any other product name or descriptor, if the function of the product meets the

637 definition of Subsection (4)(a).

638 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is
639 defined in Section [26B-4-201](#).

640 (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
641 substance, or a prefilled electronic cigarette.

642 (6) "Electronic cigarette substance" means any substance, including liquid containing
643 nicotine, used or intended for use in an electronic cigarette.

644 (7) (a) "Flavored electronic cigarette product" means an electronic cigarette product
645 that has a taste or smell that is distinguishable by an ordinary consumer either before or during

646 use or consumption of the electronic cigarette product.

647 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that
648 is labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa,
649 dessert, alcoholic beverage, herb, or spice.

650 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
651 product that[:] has a taste or smell of tobacco, mint, or menthol.

652 [~~(i) has a taste or smell of only tobacco, mint, or menthol; or~~]

653 [~~(ii) has been approved by an order granting a premarket tobacco product application of~~
654 ~~the electronic cigarette product by the United States Food and Drug Administration under 21~~
655 ~~U.S.C. Sec. 387j(c)(1)(A)(i).]~~

656 (8) "Nicotine" means a poisonous, nitrogen containing chemical that is made
657 synthetically or derived from tobacco or other plants.

658 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic
659 nicotine product.

660 (10) (a) "Nontherapeutic nicotine device" means a device that:

661 (i) has a pressurized canister that is used to administer nicotine to the user through
662 inhalation or intranasally;

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

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

666 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
667 nontherapeutic nicotine nasal spray.

668 (11) "Nontherapeutic nicotine device substance" means a substance that:

669 (a) contains nicotine;

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

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

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

674 (12) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
675 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

676 (13) "Place of business" includes:

- 677 (a) a shop;
- 678 (b) a store;
- 679 (c) a factory;
- 680 (d) a public garage;
- 681 (e) an office;
- 682 (f) a theater;
- 683 (g) a recreation hall;
- 684 (h) a dance hall;
- 685 (i) a poolroom;
- 686 (j) a cafe;
- 687 (k) a cafeteria;
- 688 (l) a cabaret;
- 689 (m) a restaurant;
- 690 (n) a hotel;
- 691 (o) a lodging house;
- 692 (p) a streetcar;
- 693 (q) a bus;
- 694 (r) an interurban or railway passenger coach;
- 695 (s) a waiting room; and
- 696 (t) any other place of business.

697 (14) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
698 with an electronic cigarette substance.

699 (15) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
700 that is sold prefilled with a nontherapeutic nicotine device substance.

701 (16) "Premarket authorized or pending electronic cigarette product" means an
702 electronic cigarette product that:

703 (a) has been approved by an order granting a premarket tobacco product application of
704 the electronic cigarette product by the United States Food and Drug Administration under 21
705 U.S.C. Sec. 387j(c)(1)(A)(i); or

706 (b) (i) was marketed in the United States on or before August 8, 2016;

707 (ii) the manufacturer submitted a premarket tobacco product application for the

708 electronic cigarette product to the United States Food and Drug Administration under 21
709 U.S.C. Sec. 387j on or before September 9, 2020; and

710 (iii) has an application described in Subsection (2)(b)(ii) that either remains under
711 review by the United States Food and Drug Administration or a final decision on the
712 application has not taken effect.

713 [~~(16)~~] (17) "Retail tobacco specialty business" means the same as that term is defined
714 in Section 26B-7-501.

715 [~~(17)~~] (18) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or
716 other lighted smoking equipment.

717 [~~(18)~~] (19) (a) "Tobacco paraphernalia" means equipment, product, or material of any
718 kind that is used, intended for use, or designed for use to package, repack, store, contain,
719 conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette
720 substance, or a nontherapeutic nicotine device substance into the human body.

721 (b) "Tobacco paraphernalia" includes:

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

724 (ii) water pipes;

725 (iii) carburetion tubes and devices;

726 (iv) smoking and carburetion masks;

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

729 (vi) chamber pipes;

730 (vii) carburetor pipes;

731 (viii) electric pipes;

732 (ix) air-driven pipes;

733 (x) chillums;

734 (xi) bongs; and

735 (xii) ice pipes or chillers.

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

737 [~~(19)~~] (20) "Tobacco product" means:

738 (a) a cigar;

- 739 (b) a cigarette; or
- 740 (c) tobacco in any form, including:
- 741 (i) chewing tobacco; and
- 742 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

743 [~~(20)~~] (21) "Tobacco retailer" means:

- 744 (a) a general tobacco retailer, as that term is defined in Section 26B-7-501; or
- 745 (b) a retail tobacco specialty business.

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

747 **76-10-113. Prohibition on distribution of flavored electronic cigarette products --**
748 **Prohibition of electronic cigarette products without federal authorization.**

749 (1) [~~It is unlawful for a tobacco retailer that is not a retail tobacco specialty business to~~
750 ~~give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any~~
751 ~~person.] It is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any
752 person a flavored electronic cigarette product.~~

753 (2) It is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any
754 person an electronic cigarette product that is not a premarket authorized or pending electronic
755 cigarette product.

756 [~~(2)~~] (3) An individual who violates this section is guilty of:

- 757 (a) a class C misdemeanor for the first offense; and
- 758 (b) a class B misdemeanor for any subsequent offense.

759 Section 8. **Effective date.**

760 This bill takes effect on July 1, 2024.