

336 (C) building codes; and

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

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

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

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

347 Section 3. Section **26A-1-131** is enacted to read:

348 **26A-1-131. Electronic cigarette registry enforcement.**

349 (1) (a) A local health department may examine the books, papers, and records of any
350 ~~H→ [distributor, wholesaler, or dealer]~~ **retailer** ~~←H~~ in this state, for the purpose of determining
350a compliance with
351 Section 59-14-810.

352 (b) A local health department may make the inspections and examinations at any time
353 during ordinary business hours, and may inspect the premises and all desks, safes, vaults, and
354 other fixtures and furniture contained in or upon the premises for the purpose of ascertaining
355 whether an electronic cigarette product is held or possessed in violation of Section 59-14-810.

356 (c) Unannounced follow-up examinations of all ~~H→ [noncompliant distributors,~~
357 ~~wholesalers, and]~~ ~~←H~~ retailers are required within 30 days after any violation of Section 59-14-810.

358 (d) A local health department shall publish the results of all examinations at least
359 annually and shall make the results available to the public on request.

360 (e) Any electronic cigarette product offered for sale in violation of Section 59-14-810
361 is declared to be a contraband good ~~H→~~ **and shall be immediately embargoed by a local health**
361a **department** ~~←H~~ .

362 (f) An electronic cigarette product described in Subsection (1)(e) may be ~~H→~~ **[seized]**
362a **embargoed** ~~←H~~
363 without a warrant by:

364 (i) a local health department; or

365 (ii) a law enforcement agency of this state if directed by a local health department with
366 jurisdiction over where the product is found.

367 (g) The cost of ~~H→ [such seizure, forfeiture;]~~ embargoing ←H and destruction shall be
 367a borne by the ~~H→ [person~~
 368 ~~from whom the products are confiscated]~~ retailer ←H .

369 (h) In an action brought under this section, a local health department may recover
 370 reasonable expenses incurred in investigating and preparing the case and attorney fees.

370a ~~H→~~ (i) A retailer shall remove any embargoed electronic cigarette product from the retailer's
 370b active inventory and work with the wholesaler or distributor to return or dispose the electronic
 370c cigarette product. ←H

371 (2) (a) A local health department shall disclose to the attorney general any information
 372 received under this section which is requested by the attorney general for purposes of
 373 determining compliance with and enforcing the provisions of this section or Section 59-14-810.

374 (b) A local health department and attorney general shall share with each other
 375 information received under this section and Section 59-14-810 or corresponding laws of other
 376 states.

377 (c) A local health department shall provide any necessary information to the State Tax
 378 Commission regarding violations of Section 59-14-810.

378a ~~H→~~ (3) A monetary penalty assessed to a retailer by a local health department under this
 378b section shall be doubled if the retailer fails to provide documentation establishing a
 378c clear chain of custody back to the manufacturer. ←H

379 Section 4. Section ~~26B-7-505~~ is amended to read:

380 **26B-7-505. Electronic cigarette products -- Labeling -- Requirements to sell --**
 381 **Advertising -- Labeling of nicotine products containing nicotine.**

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

- 386 (a) labeling;
- 387 (b) nicotine content;
- 388 (c) packaging; and
- 389 (d) product quality.

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

- 394 (a) labeling;
- 395 (b) nicotine content;
- 396 (c) packaging; and

397

⊕(d) product quality.

398 (3) (a) A person may not sell an electronic cigarette substance unless the electronic
399 cigarette substance complies with the requirements established by the department under
400 Subsection (1).

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

404 (c) Notwithstanding Subsections (3)(a) and (3)(b), ~~H~~→ beginning on January 1, 2025, ←~~H~~
404a a person may not sell an electronic
405 cigarette product that is not a premarket authorized or pending electronic cigarette product as
406 that term is defined in Section 76-10-101.

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

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

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

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

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

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

420 ~~[(†)] (B)~~ is not otherwise required under federal or state law to contain a nicotine
421 warning; and

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

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

425 "This product contains nicotine."

426 Section 5. Section **59-14-807** is amended to read:

427 **59-14-807. Electronic Cigarette Substance and Nicotine Product Proceeds**
428 **Restricted Account.**

491 53G-10-407(4)(a)(ii); and

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

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

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

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

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

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

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

504 Section 6. Section **59-14-810** is enacted to read:

505 **59-14-810. Electronic cigarette product registry.**

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

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

511 (b) the electronic cigarette product is a premarket authorized or pending electronic
512 cigarette product as defined in Section 76-10-101 ~~H~~→ **and will not be illegal to be sold in**
512a **the state as of January 1, 2025** ←~~H~~ .

513 (2) When submitting the certification a manufacturer shall submit a form that
514 separately lists each electronic cigarette product that is sold in this state.

515 (3) (a) Each certification form shall include:

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

518 (ii) (A) a copy of the order granting a premarket tobacco product application of the
519 electronic cigarette product by the United States Food and Drug Administration under 21

520 U.S.C. Sec. 387j(c)(1)(A)(i); or

521 (B) evidence that the premarket tobacco product application for the electronic cigarette

553 product should be included in the registry.

554 (b) On or before October 1, 2024, the commission shall make publicly available on the
555 commission's website a registry that lists each electronic cigarette product manufacturer and
556 each electronic cigarette product for which certification forms have been approved by the
557 Department of Health and Human Services.

558 (c) An electronic cigarette product may not be listed on the registry unless the
559 Department of Health and Human Services determines the requirements of Subsection (3)(a)
560 are met.

561 (5) (a) If the Department of Health and Human Services obtains information that an
562 electronic cigarette product should not be listed in the registry, the Department of Health and
563 Human Services shall provide the manufacturer notice and an opportunity to cure deficiencies
564 before notifying the commission to remove the manufacturer or products from the registry.

565 (b) Except as provided in Subsection (5)(c), the Department of Health and Human
566 Services shall comply with Title 63G, Chapter 4, Administrative Procedures Act, before
567 notifying the commission to remove an electronic cigarette product or manufacturer from the
568 registry.

569 (c) Subsection (5)(b) does not apply to a manufacturer failing:

570 (i) to decertify an electronic cigarette product;

571 (ii) to provide fees and documentation described in Subsection (3)(a) or (3)(d); or

572 (iii) to comply with Subsection (10).

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

577 (b) After the period described in Subsection (6)(a), any electronic cigarette product of a
578 manufacturer identified in the notice of removal are contraband and are subject to penalties
579 under Subsection (8) and seizure, forfeiture, and destruction under Section 26A-1-131.

580 (7) (a) Beginning on ~~11~~→ [November 1, 2024] January 1, 2025 ←~~11~~ , a person may not sell
580a or offer for retail sale an
581 electronic cigarette product in this state that is not included in the registry.

582 (b) A manufacturer may not sell, either directly or through a distributor, wholesaler,
583 retailer, or similar intermediary or intermediaries, an electronic cigarette product in this state

677 (4)(a)(i).

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

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

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

681 (A) an e-cigarette;

682 (B) an e-cigar;

683 (C) an e-pipe; or

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

685 definition of Subsection (4)(a).

686 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is

687 defined in Section 26B-4-201.

688 (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette

689 substance, or a prefilled electronic cigarette.

690 (6) "Electronic cigarette substance" means any substance, including liquid containing

691 nicotine, used or intended for use in an electronic cigarette.

692 (7) (a) "Flavored electronic cigarette product" means an electronic cigarette product

693 that has a taste or smell that is distinguishable by an ordinary consumer either before or during

694 use or consumption of the electronic cigarette product.

695 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that

696 is labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa,

697 dessert, alcoholic beverage, herb, ~~or~~ spice ~~or~~ mint. ~~or~~

698 (c) "Flavored electronic cigarette product" does not include an electronic cigarette

699 product that has a taste or smell of only tobacco ~~or~~ mint, or menthol.

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

701 ~~[(ii) has been approved by an order granting a premarket tobacco product application of~~

702 ~~the electronic cigarette product by the United States Food and Drug Administration under 21~~

703 ~~U.S.C. Sec. 387j(c)(1)(A)(i).]~~

704 (8) "Nicotine" means a poisonous, nitrogen containing chemical that is made

705 synthetically or derived from tobacco or other plants.

706 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic

707 nicotine product.

- 739 (o) a lodging house;
 740 (p) a streetcar;
 741 (q) a bus;
 742 (r) an interurban or railway passenger coach;
 743 (s) a waiting room; and
 744 (t) any other place of business.

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

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

749 (16) "Premarket authorized or pending electronic cigarette product" means an
 750 electronic cigarette product that:

751 (a) ~~H~~→ (i) ~~H~~ has been approved by an order granting a premarket tobacco product
 751a application of
 752 the electronic cigarette product by the United States Food and Drug Administration under 21
 753 U.S.C. Sec. 387j(c)(1)(A)(i); or

754 ~~H~~→ ~~(b)~~ (i) (ii)(A) ~~H~~ was marketed in the United States on or before August 8, 2016;

755 ~~H~~→ ~~(iii)~~ (B) ~~H~~ the manufacturer submitted a premarket tobacco product application for
 755a the
 756 electronic cigarette product to the United States Food and Drug Administration under 21
 757 U.S.C. Sec. 387j on or before September 9, 2020; and

758 ~~H~~→ ~~(iii)~~ (C) ~~H~~ has an application described in Subsection ~~H~~→ ~~(16)(b)(iii)~~ (16)(a)(ii)(B)
 758a ~~H~~ that either remains under
 759 review by the United States Food and Drug Administration or a final decision on the
 760 application has not taken effect ~~H~~→ [:] ; and

760a **(b) does not exceed:**

760b **(i) 3.25% nicotine by weight per container; or**

760c **(ii) a nicotine concentration of 32.5 milligrams per milliliter** ~~H~~

761 ~~(16)~~ (17) "Retail tobacco specialty business" means the same as that term is defined
 762 in Section 26B-7-501.

763 ~~(17)~~ (18) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or
 764 other lighted smoking equipment.

765 ~~(18)~~ (19) (a) "Tobacco paraphernalia" means equipment, product, or material of any
 766 kind that is used, intended for use, or designed for use to package, repackage, store, contain,
 767 conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette
 768 substance, or a nontherapeutic nicotine device substance into the human body.

769 (b) "Tobacco paraphernalia" includes:

- 770 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
 771 screens, permanent screens, hashish heads, or punctured metal bowls;
 772 (ii) water pipes;
 773 (iii) carburetion tubes and devices;
 774 (iv) smoking and carburetion masks;
 775 (v) roach clips, meaning objects used to hold burning material, such as a cigarette, that
 776 has become too small or too short to be held in the hand;
 777 (vi) chamber pipes;
 778 (vii) carburetor pipes;
 779 (viii) electric pipes;
 780 (ix) air-driven pipes;
 781 (x) chillums;
 782 (xi) bongs; and
 783 (xii) ice pipes or chillers.

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

785 ~~[(19)]~~ (20) "Tobacco product" means:

- 786 (a) a cigar;
 787 (b) a cigarette; or
 788 (c) tobacco in any form, including:
 789 (i) chewing tobacco; and
 790 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

791 ~~[(20)]~~ (21) "Tobacco retailer" means:

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

794 Section 8. Section **76-10-113** is amended to read:

795 **76-10-113. Prohibition on distribution of flavored electronic cigarette products --**

796 **Prohibition of electronic cigarette products without federal authorization.**

797 (1) ~~Ĥ~~→ [{] [Ĥ] Subject to Subsection (2), it is unlawful for a tobacco retailer that is not a
 797a retail tobacco specialty business to

798 give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any

799 person. [}] ~~Ĥ~~ ~~Ĥ~~→ [Ĥ]

799a (2) Notwithstanding Subsection (1), and beginning on January 1, 2025, it ~~Ĥ~~ is unlawful for a
 799b person to give, distribute, sell, offer for sale, or furnish to any

800 person a flavored electronic cigarette product.

801 ~~H~~→ [~~2~~–It] (3) **Beginning on January 1, 2025, it** ~~←H~~ is unlawful for a person to give,
801a distribute, sell, offer for sale, or furnish to any
802 person an electronic cigarette product that is not a premarket authorized or pending electronic
803 cigarette product.

804 [~~2~~] ~~H~~→ [~~3~~] (4) ~~←H~~ An individual who violates this section is guilty of:

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

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

807 Section 9. **Effective date.**

808 This bill takes effect on July 1, 2024.