

1                   **ELECTRONIC CIGARETTE AND OTHER NICOTINE**

2                                   **PRODUCT AMENDMENTS**

3   2024 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Curtis S. Bramble**

6                                   House Sponsor: Steve Eliason

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8 **LONG TITLE**

9 **General Description:**

10           This bill modifies provisions relating to the retail sale of electronic cigarettes and other  
11 nicotine products.

12 **Highlighted Provisions:**

13           This bill:

- 14           ▶ requires the State Tax Commission to report suspected sales of illegal electronic  
15 cigarette products or nicotine products to the local health department, the  
16 Department of Health and Human Services, and the Department of Public Safety;
- 17           ▶ requires the local health department to investigate whether the sale is illegal;
- 18           ▶ requires the State Tax Commission to maintain and publish a list of all persons  
19 licensed to distribute an electronic cigarette product or a nicotine product in the  
20 state;
- 21           ▶ requires an electronic cigarette product or a nicotine product retailer to purchase the  
22 products from a distributor that is licensed in the state;
- 23           ▶ requires the State Tax Commission to impose a penalty upon a retailer that  
24 purchases an electronic cigarette product or nicotine product from a person other  
25 than a licensed distributor; and
- 26           ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**



28 This bill appropriates in fiscal year 2025:

29 ▶ to Department of Public Safety - Programs & Operations - CITS State Bureau of  
30 Investigation as an ongoing appropriation:

31 • from the General Fund, \$750,000

32 ▶ to Department of Public Safety - Programs & Operations - CITS State Bureau of  
33 Investigation as a one-time appropriation:

34 • from the General Fund, One-time, \$250,000

35 **Other Special Clauses:**

36 This bill provides a special effective date.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **26A-1-114**, as last amended by Laws of Utah 2023, Chapters 90, 327

40 ENACTS:

41 **59-14-803.5**, Utah Code Annotated 1953

42 **59-14-810**, Utah Code Annotated 1953



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

45 Section 1. Section **26A-1-114** is amended to read:

46 **26A-1-114. Powers and duties of departments.**

47 (1) Subject to Subsections (7), (8), and (11), a local health department may:

48 (a) subject to the provisions in Section **26A-1-108**, enforce state laws, local ordinances,  
49 department rules, and local health department standards and regulations relating to public

50 health and sanitation, including the plumbing code administered by the Division of

51 Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction Code

52 Administration Act, and under Title 26B, Chapter 7, Part 4, General Sanitation and Food

53 Safety, in all incorporated and unincorporated areas served by the local health department;

54 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical  
55 control over property and over individuals as the local health department finds necessary for  
56 the protection of the public health;

57 (c) establish and maintain medical, environmental, occupational, and other laboratory  
58 services considered necessary or proper for the protection of the public health;

59 (d) establish and operate reasonable health programs or measures not in conflict with  
60 state law which:

61 (i) are necessary or desirable for the promotion or protection of the public health and  
62 the control of disease; or

63 (ii) may be necessary to ameliorate the major risk factors associated with the major  
64 causes of injury, sickness, death, and disability in the state;

65 (e) close theaters, schools, and other public places and prohibit gatherings of people  
66 when necessary to protect the public health;

67 (f) abate nuisances or eliminate sources of filth and infectious and communicable  
68 diseases affecting the public health and bill the owner or other person in charge of the premises  
69 upon which this nuisance occurs for the cost of abatement;

70 (g) make necessary sanitary and health investigations and inspections on the local  
71 health department's own initiative or in cooperation with the Department of Health and Human  
72 Services or the Department of Environmental Quality, or both, as to any matters affecting the  
73 public health;

74 (h) pursuant to county ordinance or interlocal agreement:

75 (i) establish and collect appropriate fees for the performance of services and operation  
76 of authorized or required programs and duties;

77 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,  
78 property, services, or materials for public health purposes; and

79 (iii) make agreements not in conflict with state law which are conditional to receiving a  
80 donation or grant;

81 (i) prepare, publish, and disseminate information necessary to inform and advise the  
82 public concerning:

83 (i) the health and wellness of the population, specific hazards, and risk factors that may  
84 adversely affect the health and wellness of the population; and

85 (ii) specific activities individuals and institutions can engage in to promote and protect  
86 the health and wellness of the population;

87 (j) investigate the causes of morbidity and mortality;

88 (k) issue notices and orders necessary to carry out this part;

89 (l) conduct studies to identify injury problems, establish injury control systems,

90 develop standards for the correction and prevention of future occurrences, and provide public  
91 information and instruction to special high risk groups;

92 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules  
93 within the jurisdiction of the boards;

94 (n) cooperate with the state health department, the Department of Corrections, the  
95 Administrative Office of the Courts, the Division of Juvenile Justice and Youth Services, and  
96 the Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual  
97 offenders, convicted sexual offenders, and any victims of a sexual offense;

98 (o) investigate suspected bioterrorism and disease pursuant to Section 26B-7-321; and

99 (p) provide public health assistance in response to a national, state, or local emergency,  
100 a public health emergency as defined in Section 26B-7-301, or a declaration by the President of  
101 the United States or other federal official requesting public health-related activities.

102 (2) The local health department shall:

103 (a) establish programs or measures to promote and protect the health and general  
104 wellness of the people within the boundaries of the local health department;

105 (b) investigate infectious and other diseases of public health importance and implement  
106 measures to control the causes of epidemic and communicable diseases and other conditions  
107 significantly affecting the public health which may include involuntary testing of alleged sexual  
108 offenders for the HIV infection pursuant to Section 53-10-802 and voluntary testing of victims  
109 of sexual offenses for HIV infection pursuant to Section 53-10-803;

110 (c) cooperate with the department in matters pertaining to the public health and in the  
111 administration of state health laws; [~~and~~]

112 (d) coordinate implementation of environmental programs to maximize efficient use of  
113 resources by developing with the Department of Environmental Quality a Comprehensive  
114 Environmental Service Delivery Plan which:

115 (i) recognizes that the Department of Environmental Quality and local health  
116 departments are the foundation for providing environmental health programs in the state;

117 (ii) delineates the responsibilities of the department and each local health department  
118 for the efficient delivery of environmental programs using federal, state, and local authorities,  
119 responsibilities, and resources;

120 (iii) provides for the delegation of authority and pass through of funding to local health

121 departments for environmental programs, to the extent allowed by applicable law, identified in  
122 the plan, and requested by the local health department; and

123 (iv) is reviewed and updated annually[:]; and

124 (e) investigate a report made in accordance with Section 59-14-810 to determine  
125 whether a product is sold in violation of law.

126 (3) The local health department has the following duties regarding public and private  
127 schools within the local health department's boundaries:

128 (a) enforce all ordinances, standards, and regulations pertaining to the public health of  
129 persons attending public and private schools;

130 (b) exclude from school attendance any person, including teachers, who is suffering  
131 from any communicable or infectious disease, whether acute or chronic, if the person is likely  
132 to convey the disease to those in attendance; and

133 (c) (i) make regular inspections of the health-related condition of all school buildings  
134 and premises;

135 (ii) report the inspections on forms furnished by the department to those responsible for  
136 the condition and provide instructions for correction of any conditions that impair or endanger  
137 the health or life of those attending the schools; and

138 (iii) provide a copy of the report to the department at the time the report is made.

139 (4) If those responsible for the health-related condition of the school buildings and  
140 premises do not carry out any instructions for corrections provided in a report in Subsection  
141 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the  
142 persons responsible.

143 (5) The local health department may exercise incidental authority as necessary to carry  
144 out the provisions and purposes of this part.

145 (6) Nothing in this part may be construed to authorize a local health department to  
146 enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon  
147 monoxide detector in a residential dwelling against anyone other than the occupant of the  
148 dwelling.

149 (7) (a) Except as provided in Subsection (7)(c), a local health department may not  
150 declare a public health emergency or issue an order of constraint until the local health  
151 department has provided notice of the proposed action to the chief executive officer of the

152 relevant county no later than 24 hours before the local health department issues the order or  
153 declaration.

154 (b) The local health department:

155 (i) shall provide the notice required by Subsection (7)(a) using the best available  
156 method under the circumstances as determined by the local health department;

157 (ii) may provide the notice required by Subsection (7)(a) in electronic format; and

158 (iii) shall provide the notice in written form, if practicable.

159 (c) (i) Notwithstanding Subsection (7)(a), a local health department may declare a  
160 public health emergency or issue an order of constraint without approval of the chief executive  
161 officer of the relevant county if the passage of time necessary to obtain approval of the chief  
162 executive officer of the relevant county as required in Subsection (7)(a) would substantially  
163 increase the likelihood of loss of life due to an imminent threat.

164 (ii) If a local health department declares a public health emergency or issues an order  
165 of constraint as described in Subsection (7)(c)(i), the local health department shall notify the  
166 chief executive officer of the relevant county before issuing the order of constraint.

167 (iii) The chief executive officer of the relevant county may terminate a declaration of a  
168 public health emergency or an order of constraint issued as described in Subsection (7)(c)(i)  
169 within 72 hours of declaration of the public health emergency or issuance of the order of  
170 constraint.

171 (d) (i) The relevant county governing body may at any time terminate a public health  
172 emergency or an order of constraint issued by the local health department by majority vote of  
173 the county governing body in response to a declared public health emergency.

174 (ii) A vote by the relevant county governing body to terminate a public health  
175 emergency or an order of constraint as described in Subsection (7)(d)(i) is not subject to veto  
176 by the relevant chief executive officer.

177 (8) (a) Except as provided in Subsection (8)(b), a public health emergency declared by  
178 a local health department expires at the earliest of:

179 (i) the local health department or the chief executive officer of the relevant county  
180 finding that the threat or danger has passed or the public health emergency reduced to the  
181 extent that emergency conditions no longer exist;

182 (ii) 30 days after the date on which the local health department declared the public

183 health emergency; or

184 (iii) the day on which the public health emergency is terminated by majority vote of the  
185 county governing body.

186 (b) (i) The relevant county legislative body, by majority vote, may extend a public  
187 health emergency for a time period designated by the county legislative body.

188 (ii) If the county legislative body extends a public health emergency as described in  
189 Subsection (8)(b)(i), the public health emergency expires on the date designated by the county  
190 legislative body.

191 (c) Except as provided in Subsection (8)(d), if a public health emergency declared by a  
192 local health department expires as described in Subsection (8)(a), the local health department  
193 may not declare a public health emergency for the same illness or occurrence that precipitated  
194 the previous public health emergency declaration.

195 (d) (i) Notwithstanding Subsection (8)(c), subject to Subsection (8)(f), if the local  
196 health department finds that exigent circumstances exist, after providing notice to the county  
197 legislative body, the department may declare a new public health emergency for the same  
198 illness or occurrence that precipitated a previous public health emergency declaration.

199 (ii) A public health emergency declared as described in Subsection (8)(d)(i) expires in  
200 accordance with Subsection (8)(a) or (b).

201 (e) For a public health emergency declared by a local health department under this  
202 chapter or under Title 26B, Chapter 7, Part 3, Treatment, Isolation, and Quarantine Procedures  
203 for Communicable Diseases, the Legislature may terminate by joint resolution a public health  
204 emergency that was declared based on exigent circumstances or that has been in effect for more  
205 than 30 days.

206 (f) If the Legislature or county legislative body terminates a public health emergency  
207 declared due to exigent circumstances as described in Subsection (8)(d)(i), the local health  
208 department may not declare a new public health emergency for the same illness, occurrence, or  
209 exigent circumstances.

210 (9) (a) During a public health emergency declared under this chapter or under Title  
211 26B, Chapter 7, Part 3, Treatment, Isolation, and Quarantine Procedures for Communicable  
212 Diseases:

213 (i) except as provided in Subsection (9)(b), a local health department may not issue an

214 order of constraint without approval of the chief executive officer of the relevant county;

215 (ii) the Legislature may at any time terminate by joint resolution an order of constraint  
216 issued by a local health department in response to a declared public health emergency that has  
217 been in effect for more than 30 days; and

218 (iii) a county governing body may at any time terminate by majority vote of the  
219 governing body an order of constraint issued by a local health department in response to a  
220 declared public health emergency.

221 (b) (i) Notwithstanding Subsection (9)(a)(i), a local health department may issue an  
222 order of constraint without approval of the chief executive officer of the relevant county if the  
223 passage of time necessary to obtain approval of the chief executive officer of the relevant  
224 county as required in Subsection (9)(a)(i) would substantially increase the likelihood of loss of  
225 life due to an imminent threat.

226 (ii) If a local health department issues an order of constraint as described in Subsection  
227 (9)(b), the local health department shall notify the chief executive officer of the relevant county  
228 before issuing the order of constraint.

229 (iii) The chief executive officer of the relevant county may terminate an order of  
230 constraint issued as described in Subsection (9)(b) within 72 hours of issuance of the order of  
231 constraint.

232 (c) (i) For a local health department that serves more than one county, the approval  
233 described in Subsection (9)(a)(i) is required for the chief executive officer for which the order  
234 of constraint is applicable.

235 (ii) For a local health department that serves more than one county, a county governing  
236 body may only terminate an order of constraint as described in Subsection (9)(a)(iii) for the  
237 county served by the county governing body.

238 (10) (a) During a public health emergency declared as described in this title:

239 (i) the department or a local health department may not impose an order of constraint  
240 on a religious gathering that is more restrictive than an order of constraint that applies to any  
241 other relevantly similar gathering; and

242 (ii) an individual, while acting or purporting to act within the course and scope of the  
243 individual's official department or local health department capacity, may not:

244 (A) prevent a religious gathering that is held in a manner consistent with any order of



245 constraint issued pursuant to this title; or

246 (B) impose a penalty for a previous religious gathering that was held in a manner  
247 consistent with any order of constraint issued pursuant to this title.

248 (b) Upon proper grounds, a court of competent jurisdiction may grant an injunction to  
249 prevent the violation of this Subsection (10).

250 (c) During a public health emergency declared as described in this title, the department  
251 or a local health department shall not issue a public health order or impose or implement a  
252 regulation that substantially burdens an individual's exercise of religion unless the department  
253 or local health department demonstrates that the application of the burden to the individual:

254 (i) is in furtherance of a compelling government interest; and

255 (ii) is the least restrictive means of furthering that compelling government interest.

256 (d) Notwithstanding Subsections (8)(a) and (c), the department or a local health  
257 department shall allow reasonable accommodations for an individual to perform or participate  
258 in a religious practice or rite.

259 (11) An order of constraint issued by a local health department pursuant to a declared  
260 public health emergency does not apply to a facility, property, or area owned or leased by the  
261 state, including the capitol hill complex, as that term is defined in Section [63C-9-102](#).

262 (12) A local health department may not:

263 (a) require a person to obtain an inspection, license, or permit from the local health  
264 department to engage in a practice described in Subsection [58-11a-304\(5\)](#); or

265 (b) prevent or limit a person's ability to engage in a practice described in Subsection  
266 [58-11a-304\(5\)](#) by:

267 (i) requiring the person to engage in the practice at a specific location or at a particular  
268 type of facility or location; or

269 (ii) enforcing a regulation applicable to a facility or location where the person chooses  
270 to engage in the practice.

271 Section 2. Section **59-14-803.5** is enacted to read:

272 **59-14-803.5. Publication of licensed distributors -- Retailer transaction only with**  
273 **licensed distributor -- Penalty.**

274 (1) (a) The commission shall maintain a list that includes the identity of each person  
275 licensed under this part to distribute an electronic cigarette product or a nicotine product.

276 (b) The list shall be:

277 (i) published on the commission website; and

278 (ii) updated by the commission at least once per quarter.

279 (2) A retailer may obtain an electronic cigarette product or a nicotine product only from

280 a licensed distributor identified on the list described in Subsection (1).

281 (3) (a) The commission may impose a penalty against a retailer that purchases an

282 electronic cigarette product or a nicotine product from a person other than a licensed

283 distributor.

284 (b) The penalty is in an amount equal to the tax that is due under Section ~~5~~→ [59-14-805]

284a 59-14-804 ←~~5~~ on

285 the electronic cigarette product or the nicotine product.

286 Section 3. Section **59-14-810** is enacted to read:

287 **59-14-810. Reports of illegal product.**

288 If the commission suspects that an electronic cigarette product or a nicotine product is

289 being sold in the state in violation of a law other than a law described in this part, the

290 commission shall report the name of the seller, the type of product, and the county where the

291 product was sold:

292 (1) to the local health department for the county where the sale occurs;

293 (2) the Department of Health and Human Services; and

294 (3) the Department of Public Safety.

295 Section 4. **FY 2025 Appropriation.**

296 The following sums of money are appropriated for the fiscal year beginning July 1,

297 2024, and ending June 30, 2025. These are additions to amounts previously appropriated for

298 fiscal year 2025.

299 Subsection 4(a). **Operating and Capital Budgets.**

300 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the

301 Legislature appropriates the following sums of money from the funds or accounts indicated for

302 the use and support of the government of the state of Utah.

303 ITEM 1 To Department of Public Safety - Programs & Operations

304 From General Fund, One-time \$250,000

305 From General Fund \$750,000

306 Schedule of Programs:

307 CITS State Bureau of Investigation \$1,000,000

308 The Legislature intends that appropriations provided under this section be used by the  
309 Department of Public Safety to investigate suspected crimes involving an electronic cigarette  
310 product or a nicotine product.

311 Section 5. **Effective date.**

312 This bill takes effect on July 1, 2024.