

ELECTRONIC CIGARETTE AND OTHER NICOTINE

PRODUCT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts and amends provisions relating to electronic cigarette products, nontherapeutic nicotine products, and alternative nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ imposes civil penalties for the sale of a nontherapeutic nicotine product or an alternative nicotine product;
- ▶ requires the Department of Health to regulate a nontherapeutic nicotine product or an alternative nicotine product;
- ▶ imposes licensing requirements on a person that sells or distributes a nontherapeutic nicotine product or an alternative nicotine product;
- ▶ imposes an excise tax on the sale of an electronic cigarette substance, a nontherapeutic nicotine device substance, an alternative nicotine product, and certain prefilled devices;
- ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account;
- ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a nontherapeutic nicotine device substance, and an alternative nicotine product; and



► provides criminal penalties for a sale or purchase of an electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product in violation of law.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

26-42-102, as last amended by Laws of Utah 2015, Chapter 132
26-57-101, as enacted by Laws of Utah 2015, Chapter 132
26-57-102, as enacted by Laws of Utah 2015, Chapter 132
59-14-102, as last amended by Laws of Utah 2013, Chapter 148
59-14-201, as last amended by Laws of Utah 2013, Chapter 148
59-14-203.5, as last amended by Laws of Utah 2011, Chapter 96
59-14-801, as enacted by Laws of Utah 2015, Chapter 132
59-14-802, as enacted by Laws of Utah 2015, Chapter 132
59-14-803, as enacted by Laws of Utah 2015, Chapter 132
76-10-101, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 132
76-10-104, as last amended by Laws of Utah 2010, Chapter 114
76-10-104.1, as last amended by Laws of Utah 2013, Chapter 278
76-10-105, as last amended by Laws of Utah 2010, Chapter 114
76-10-105.1, as last amended by Laws of Utah 2015, Chapters 66 and 132

ENACTS:

26-57-104, Utah Code Annotated 1953
59-14-804, Utah Code Annotated 1953
59-14-805, Utah Code Annotated 1953

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

Section 1. Section **26-42-102** is amended to read:

26-42-102. Definitions.

As used in this chapter:

(1) "Commission" means the ~~Utah~~ State Tax Commission.

(2) "Employee" means an employee of a licensee.

(3) "Enforcing agency" means the state Department of Health, or any local health department, enforcing the provisions of this chapter.

(4) "Licensee" means a person licensed:

(a) under Section 59-14-201 to sell cigarettes at retail;

(b) under Section 59-14-301 to sell tobacco products at retail; or

(c) under Section 59-14-803 to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product.

(5) "License to sell tobacco" or "license" means a license issued:

(a) under Section 59-14-201 to sell cigarettes at retail;

(b) under Section 59-14-301 to sell tobacco products at retail; or

(c) under Section 59-14-803 to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product.

(6) "Tobacco" means:

(a) a cigarette or a tobacco product, as defined in Section 59-14-102; or

(b) an electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product, as defined in Section ~~59-14-802~~ 59-14-102.

Section 2. Section 26-57-101 is amended to read:

**CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT
REGULATION ACT**

26-57-101. Title.

This chapter is known as the "Electronic Cigarette and Other Nicotine Product Regulation Act."

Section 3. Section 26-57-102 is amended to read:

26-57-102. Definitions.

As used in this chapter:

(1) "Alternative nicotine product" means the same as that term is defined in Section 59-14-102.

[~~(1)~~] (2) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

[~~(2)~~] (3) "Electronic cigarette" means the same as that term is defined in Section [\[59-14-802\] 59-14-102](#).

[~~(3)~~] (4) "Electronic cigarette product" means an electronic cigarette or an electronic cigarette substance.

[~~(4)~~] (5) "Electronic cigarette substance" means the same as that term is defined in Section [\[59-14-802\] 59-14-102](#).

(6) "Local health department" means the same as that term is defined in Section [26A-1-102](#).

[~~(5)~~] (7) "Manufacture" includes:

(a) to cast, construct, or make electronic cigarettes; or

(b) to blend, make, process, or prepare an electronic cigarette substance.

[~~(6)~~] (8) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette substance that is sold in a container that:

(a) is pre-filled by the electronic cigarette substance manufacturer; and

(b) the electronic cigarette manufacturer does not intend for a consumer to open.

(9) "Nontherapeutic nicotine device" means the same as that term is defined in Section [59-14-102](#).

(10) "Nontherapeutic nicotine device substance" means the same as that term is defined in Section [59-14-102](#).

(11) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a nontherapeutic nicotine device substance.

Section 4. Section **26-57-104** is enacted to read:

26-57-104. Nontherapeutic nicotine products and alternative nicotine products -- Labeling -- Manufacturing and quality control standards.

(1) (a) To the extent that the United States Food and Drug Administration issues a regulation regarding labeling, nicotine content, packaging, or product quality for a nontherapeutic nicotine product or an alternative nicotine product, the federal regulations apply and the department is not required under this section to establish a rule on the same subject for which a federal regulation exists.

(b) The department or a local health department may not enact a rule or regulation

regarding labeling, nicotine content, packaging, or product quality for a nontherapeutic nicotine product or an alternative nicotine content that conflicts with a regulation by the United States Food and Drug Administration.

(2) No later than January 1, 2018, the department shall, in consultation with a local health department and with input from members of the public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, standards for a nontherapeutic nicotine product and an alternative nicotine product regarding:

(a) labeling;

(b) nicotine content;

(c) packaging; and

(d) product quality.

(3) The standards established by the department under Subsection (2) do not apply to a manufacturer sealed nontherapeutic nicotine product or a manufacturer sealed alternative nicotine product.

(4) Beginning on July 1, 2018, a person may not distribute or sell a nontherapeutic nicotine product or an alternative nicotine product unless the nontherapeutic nicotine product or alternative nicotine product complies with the standards established by the department under Subsection (2).

(5) (a) Beginning on July 1, 2018, a local health department may not enact a rule or regulation regarding the labeling, nicotine content, packaging, or product quality of a nontherapeutic nicotine product or an alternative nicotine product that is not identical to the standards established by the department under Subsection (2).

(b) Except as provided in Subsection (5)(c), a local health department may enact a rule or regulation regarding nontherapeutic nicotine product manufacturing or alternative nicotine product manufacturing.

(c) A local health department may not enact a rule or regulation regarding a manufacturer sealed nontherapeutic nicotine product or a manufacturer sealed alternative nicotine product.

Section 5. Section **59-14-102** is amended to read:

59-14-102. Definitions.

As used in this chapter:

(1) (a) Except as provided in Subsection (1)(c), "alternative nicotine product" means a product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, or a tobacco product, that:

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

(b) "Alternative nicotine product" includes:

(i) pure nicotine;
(ii) snortable nicotine;
(iii) dissolvable orbs, pellets, sticks, or strips; and
(iv) nicotine-laced food and drink.

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

~~[(+)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

(a) regardless of:
(i) the size of the roll;
(ii) the shape of the roll; or
(iii) whether the tobacco is ~~[(A)]~~ flavored~~[(B)]~~, adulterated~~[(C)]~~, or ~~[(E)]~~ mixed with any other ingredient; and

(b) if the wrapper or cover of the roll is made of paper or any other substance or material except tobacco.

~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability to produce at least 150 cigarettes in less than 30 minutes.

~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~[who]~~ that:

(a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette rolling machine; and
(ii) makes the cigarette rolling machine available for use by another person to produce a cigarette; or
(b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

183 ~~[(4)]~~ (5) "Consumer" means a person that is not required:

184 (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#); ~~[or]~~

185 (b) under Section [59-14-301](#) to obtain a license under Section [59-14-202](#)~~[-];~~ or

186 (c) under Section [59-14-803](#) to obtain a license.

187 ~~[(5)]~~ (6) "Counterfeit cigarette" means:

188 (a) a cigarette that has a false manufacturing label; or

189 (b) a package of cigarettes bearing a counterfeit tax stamp.

190 (7) (a) "Electronic cigarette" means:

191 (i) an electronic device used to deliver or capable of delivering vapor containing
192 nicotine to an individual's respiratory system;

193 (ii) a component of the device described in Subsection (7)(a)(i); or

194 (iii) an accessory sold in the same package as the device described in Subsection
195 (7)(a)(i).

196 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
197 [26-38-2](#).

198 (8) "Electronic cigarette product" means an electronic cigarette or an electronic
199 cigarette substance.

200 (9) "Electronic cigarette substance" means any substance, including liquid containing
201 nicotine, used or intended for use in an electronic cigarette.

202 ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
203 directly or indirectly, a finished cigarette for sale or distribution.

204 ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
205 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
206 located in the state.

207 ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

208 (a) is made wholly or in part of tobacco;

209 (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and

210 (c) ~~[that]~~ is wrapped in a substance:

211 (i) containing tobacco; and

212 (ii) that is not exclusively natural leaf tobacco.

213 ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a

person ~~[who]~~ that:

(i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or

(ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repackages, relabels, or imports a finished electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product.

(b) "Manufacturer" does not include a cigarette rolling machine operator.

~~[(10)]~~ (14) "Moist snuff" means tobacco that:

(a) is finely~~[-(i)]~~ cut~~[-(ii)]~~, ground~~[-(iii)]~~, or ~~[(iii)]~~ powdered;

(b) has at least 45% moisture content, as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) is not intended to be:

(i) smoked; or

(ii) placed in the nasal cavity; and

(d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or distributed in single-use units, including:

(i) tablets;

(ii) lozenges;

(iii) strips;

(iv) sticks; or

(v) packages containing multiple single-use units.

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

(16) (a) "Nontherapeutic nicotine device" means a device that:

(i) is used to deliver nicotine to the bloodstream by:

(A) puffing or inhaling pure nicotine into the mouth; or

(B) spraying nicotine into the nose;

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

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

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

(17) "Nontherapeutic nicotine device substance" means a cartridge that:

(a) contains nicotine;

(b) is used or intended to be used in a nontherapeutic nicotine device;

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

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

(18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a nontherapeutic nicotine device substance.

~~[(11)]~~ (19) "Retailer" means a person that:

(a) sells or distributes a cigarette, electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product to a consumer in the state; or

(b) intends to sell or distribute a cigarette, electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product to a consumer in the state.

~~[(12)]~~ (20) "Stamp" means the indicia required to be placed on a cigarette package that evidences payment of the tax on cigarettes required by Section 59-14-205.

~~[(13)]~~ (21) (a) "Tobacco product" means a product made of, or containing, tobacco.

(b) "Tobacco product" includes:

(i) a cigarette produced from a cigarette rolling machine;

(ii) a little cigar; or

(iii) moist snuff.

(c) "Tobacco product" does not include a cigarette.

~~[(14)]~~ (22) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Section 6. Section 59-14-201 is amended to read:

59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.

(1) It is unlawful for any person in this state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the commission under Section 59-14-202.

(2) Except for the tax rates described in Subsection 59-14-204(2), this part does not apply to a cigarette produced from a cigarette rolling machine.

(3) (a) A license may not be issued for the sale of cigarettes until the applicant has paid

a license fee of \$30 or a license renewal fee of \$20, as appropriate.

(b) The fee for reinstatement of a license that has been revoked, suspended, or allowed to expire is \$30.

(4) (a) (i) ~~[A license]~~ The commission may not ~~[be issued]~~ issue a license until the applicant files a bond with the commission.

(ii) The commission shall determine the form and the amount of the bond, the minimum amount of which shall be \$500.

(iii) The bond shall be executed by the applicant as principal, with a corporate surety, payable to the state and conditioned upon the faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations.

(b) An applicant is not required to post a bond if the applicant:

(i) purchases, during the license year, only products that have the proper state stamp affixed as required by this chapter; and

(ii) files an affidavit with the applicant's application attesting to this fact.

Section 7. Section **59-14-203.5** is amended to read:

59-14-203.5. Commission action to suspend or revoke license.

(1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required under Section [26-42-103](#) regarding suspension or revocation of a license due to the sale of cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's finding of a violation of Section [26-42-103](#).

(b) The commission shall provide written notice of the suspension or revocation to the licensee.

(2) It is the duty of the enforcing agency to advise the commission of any finding of a violation of Section [26-42-103](#) for which suspension or revocation of the license is a penalty.

(3) When the commission revokes a licensee's license under this section, the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section [59-14-202](#) ~~[or]~~, Section 59-14-301 to sell tobacco, or Section 59-14-803 to sell an electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product at the location for which the license was issued for one year after:

(a) the day on which the time for filing an appeal of the revocation ends; or

(b) if the revocation is appealed, the day on which the decision to uphold the

307 revocation becomes final.

308 Section 8. Section **59-14-801** is amended to read:

309 **Part 8. Electronic Cigarette and Other Nicotine Product Licensing and Taxation Act**

310 **59-14-801. Title.**

311 This part is known as the "Electronic Cigarette and Other Nicotine Product Licensing
312 and Taxation Act."

313 Section 9. Section **59-14-802** is amended to read:

314 **59-14-802. Definitions.**

315 As used in this part:

316 ~~[(1) "Cigarette" means the same as that term is defined in Section 59-14-102.]~~

317 ~~[(2)(a) "Electronic cigarette" means:]~~

318 ~~[(i) an electronic device used to deliver or capable of delivering vapor containing~~
319 ~~nicotine to an individual's respiratory system;]~~

320 ~~[(ii) a component of the device described in Subsection (2)(a)(i); or]~~

321 ~~[(iii) an accessory sold in the same package as the device described in Subsection~~
322 ~~(2)(a)(i).]~~

323 ~~[(b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.]~~

324 ~~[(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~
325 ~~cigarette substance.]~~

326 ~~[(4) "Electronic cigarette substance" means any substance, including liquid containing~~
327 ~~nicotine, used or intended for use in an electronic cigarette.]~~

328 ~~[(5)]~~ (1) "Enforcing agency" means the Department of Health, a county health
329 department, or a local health department, when enforcing:

330 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

331 (b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation
332 Act.

333 ~~[(6)]~~ (2) "Licensee" means a person that holds a valid license to sell an electronic
334 cigarette ~~[products]~~ product, a nontherapeutic nicotine product, or an alternative nicotine
335 product.

336 ~~[(7) "License to sell an electronic cigarette product" means a license issued by the~~
337 ~~commission under Subsection 59-14-803(3).]~~

(3) (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine device substance, prefilled nontherapeutic nicotine device, or alternative nicotine product charges after subtracting a discount.

(b) "Manufacturer's sales price" includes an original Utah destination freight charge, regardless of:

(i) whether the electronic cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine device substance, prefilled nontherapeutic nicotine device, or alternative nicotine product is shipped f.o.b. origin or f.o.b. destination; or

(ii) who pays the original Utah destination charge.

(4) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an electronic cigarette substance.

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

Section 10. Section **59-14-803** is amended to read:

59-14-803. Registration and license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product.

(1) (a) Except as provided in Subsection [(2)] (1)(b), a person may not sell, offer to sell, or distribute an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product in Utah without first:

(i) registering with the commission under this section; and

(ii) obtaining a license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product from the commission under this section.

[(2)] (b) A person that holds a valid license to sell cigarettes under Section 59-14-201, or a person that holds a valid license to sell tobacco products under Section 59-14-301, may[; ~~without obtaining a separate license to sell an electronic cigarette product under this part,~~] sell, offer to sell, or distribute an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product in Utah without obtaining a separate license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product in accordance with this [part] section.

(2) (a) To register with the commission, a person shall file a bond with the

commission.

(b) (i) The bond shall be in the form and amount determined by the commission, the minimum amount of which shall be \$500.

(ii) The bond shall be executed by the registrant as principal, with a corporate surety, payable to the state and conditioned upon the faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations.

(c) The commission may not charge a fee for registration.

(3) (a) Except as provided in Subsection (6), the commission shall issue a license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product to a person that[:] meets the requirements of this Subsection (3).

~~[(a)]~~ (b) [submits] The person requesting a license shall file an application, on a form created by the commission, that includes:

(i) the person's name;

(ii) the address of the facility where the person will sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product; and

(iii) any other information the commission requires to implement this chapter~~[-and]~~.

~~[(b)]~~ (c) [pays] With the application, the person shall pay a fee:

(i) in the amount of \$30 if the person is applying for a first-time license or reinstating a revoked, suspended, or expired license; or

(ii) ~~[if renewing the person's license,]~~ in the amount of \$20 if the person is renewing a license.

(d) (i) The person shall file a bond with the commission in the form and the amount determined by the commission, the minimum amount of which shall be \$500.

(ii) The bond required by this Subsection (3) may be made in combination with the bond required by Subsection (2).

(4) A license described in Subsection (3) is:

(a) valid only at one fixed business address;

(b) valid for three years;

(c) valid only for a physical location; and

(d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

(5) The commission shall, after notifying a licensee, revoke a license described in

Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

(a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

(b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation Act.

(6) If the commission revokes a person's license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product under Subsection (5), the commission may not issue a license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section 59-14-301 to the person until one year after:

(a) the day on which the time for filing an appeal of the revocation ends, as determined by the enforcing agency; or

(b) if the person appeals the enforcing agency's decision to revoke the license to sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product, the day on which the enforcing agency's decision to uphold the revocation is final.

(7) If the commission revokes a person's license under Subsection (5), the commission shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the person's license to sell tobacco under Section 59-14-301, if any.

(8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the additional information described in Subsection (3)~~(a)~~(b)(iii) that a person must provide in the application described in Subsection ~~(3)~~(3)~~(a)~~(b).

(9) It is a class B misdemeanor for a person to violate Subsection (1).

Section 11. Section 59-14-804 is enacted to read:

59-14-804. Taxation of an electronic cigarette product, a nontherapeutic nicotine product, and an alternative nicotine product.

(1) (a) There is levied a tax upon the following:

(i) an electronic cigarette substance; and

(ii) a prefilled electronic cigarette.

(b) Beginning on July 1, 2018, there is levied a tax upon the following:

(i) an alternative nicotine product;

431 (ii) a nontherapeutic nicotine device substance; or

432 (iii) a prefilled nontherapeutic nicotine device.

433 (2) The rate of the tax levied under Subsection (1) is .86 multiplied by the
434 manufacturer's sales price.

435 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
436 pay the tax levied under Subsection (1) at the time that the electronic cigarette substance,
437 prefilled electronic cigarette, nontherapeutic nicotine device substance, prefilled nontherapeutic
438 nicotine device, or alternative nicotine product is first received in the state.

439 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
440 resell the electronic cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine
441 device substance, prefilled nontherapeutic nicotine device, or alternative nicotine product to
442 another distributor, another retailer, or a consumer before paying the tax levied under
443 Subsection (1).

444 (4) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
445 shall remit the taxes collected in accordance with this section to the commission.

446 (b) The commission shall deposit, for each fiscal year:

447 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic
448 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section
449 59-14-805; and

450 (ii) the balance of remittances received in accordance with this section into the General
451 Fund.

452 Section 12. Section **59-14-805** is enacted to read:

453 **59-14-805. Electronic Cigarette Substance and Other Nicotine Product Tax**
454 **Restricted Account.**

455 (1) There is created within the General Fund a restricted account known as the
456 "Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account."

457 (2) The Electronic Cigarette Substance and Other Nicotine Product Tax Restricted
458 Account consists of:

459 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section
460 59-14-804; and

461 (b) amounts appropriated by the Legislature.

(3) For each fiscal year beginning with fiscal year 2017-18, and subject to appropriation by the Legislature, the Division of Finance shall distribute money from the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account to the local health departments in accordance with Section 26A-1-116 for the purpose of:

- (a) enforcing the regulation provisions under Section 26-57-103; and
- (b) providing electronic cigarette and other nicotine product use prevention education to youth.

Section 13. Section 76-10-101 is amended to read:

Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical Substances

76-10-101. Definitions.

As used in this part:

- (1) "Alternative nicotine product" means the same as that term is defined in Section 59-14-102.
- (2) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as described in Subsection [(2)] (3).
- [(2)] (3) "Cigarette" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:
 - (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
 - (b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection [(2)] (3)(a).
- ~~[(3)] "Electronic cigarette" means an electronic cigarette product, as defined in Section 59-14-802.]~~
- (4) (a) "Electronic cigarette" means:
 - (i) an electronic device used to deliver or capable of delivering vapor containing nicotine to an individual's respiratory system;
 - (ii) a component of the device described in Subsection (4)(a)(i); or
 - (iii) an accessory sold in the same package as the device described in Subsection

493 (4)(a)(i).

494 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
495 26-38-2.

496 (5) "Electronic cigarette product" means an electronic cigarette or electronic cigarette
497 substance.

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

500 (7) (a) "Nontherapeutic nicotine device" means a device that:

501 (i) is used to deliver nicotine to the bloodstream by:

502 (A) puffing or inhaling pure nicotine into the mouth; or

503 (B) spraying nicotine into the nose;

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

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

507 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
508 nontherapeutic nicotine nasal spray.

509 (8) "Nontherapeutic nicotine device substance" means a cartridge that:

510 (a) contains nicotine;

511 (b) is used or intended to be used in a nontherapeutic nicotine device;

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

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

515 (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
516 nontherapeutic nicotine device substance.

517 [~~(4)~~] (10) "Place of business" includes:

518 (a) a shop;

519 (b) a store;

520 (c) a factory;

521 (d) a public garage;

522 (e) an office;

523 (f) a theater;

- 524 (g) a recreation hall;
- 525 (h) a dance hall;
- 526 (i) a poolroom;
- 527 (j) a café;
- 528 (k) a cafeteria;
- 529 (l) a cabaret;
- 530 (m) a restaurant;
- 531 (n) a hotel;
- 532 (o) a lodging house;
- 533 (p) a streetcar;
- 534 (q) a bus;
- 535 (r) an interurban or railway passenger coach;
- 536 (s) a waiting room; and
- 537 (t) any other place of business.

538 ~~[(5)]~~ (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
539 lighted smoking equipment.

540 Section 14. Section **76-10-104** is amended to read:

541 **76-10-104. Providing a cigar, cigarette, electronic cigarette, nontherapeutic**
542 **nicotine product, alternative nicotine product, or tobacco to a minor -- Penalties.**

543 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
544 provides any cigar, cigarette, electronic cigarette product, nontherapeutic nicotine product, or
545 alternative nicotine product, or tobacco in any form, to any person under 19 years of age, is
546 guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second
547 offense, and a class A misdemeanor on subsequent offenses.

548 (2) For purposes of this section "provides":

549 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

550 (b) does not include the acts of the United States Postal Service or other common
551 carrier when engaged in the business of transporting and delivering packages for others or the
552 acts of a person, whether compensated or not, who transports or delivers a package for another
553 person without any reason to know of the package's content.

554 Section 15. Section **76-10-104.1** is amended to read:

76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.

(1) For purposes of this section:

(a) "Provides":

(i) includes selling, giving, furnishing, sending, or causing to be sent; and

(ii) does not include the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.

(b) (i) "Tobacco paraphernalia" ~~[(+)]~~ means any equipment, product, or material of any kind which is used, intended for use, or designed for use to package, repack, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance, nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human body, including:

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

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

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

(F) chamber pipes;

(G) carburetor pipes;

(H) electric pipes;

(I) air-driven pipes;

(J) chillums;

(K) bongs; and

(L) ice pipes or chillers ~~[-and]~~.

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

(2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

(b) A person who violates this section is guilty of a class C misdemeanor on the first

offense and a class B misdemeanor on subsequent offenses.

Section 16. Section **76-10-105** is amended to read:

76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, nontherapeutic nicotine product, or alternative nicotine product, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any ~~[18-year-old]~~ 18-year-old person who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product, or tobacco in any form is guilty of a class C misdemeanor and subject to:

(a) a minimum fine or penalty of \$60; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product, or tobacco in any form is subject to the jurisdiction of the Juvenile Court and:

(a) a minimum fine or penalty of \$60; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section [53A-3-402](#) may issue citations for violations of this section committed on school property. Cited violations shall be reported to the appropriate juvenile court.

Section 17. Section **76-10-105.1** is amended to read:

76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, electronic cigarettes, nontherapeutic nicotine product, or alternative nicotine product -- Minors not allowed in tobacco specialty shop -- Penalties.

(1) As used in this section:

(a) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

(b) (i) "Face-to-face exchange" means a transaction made in person between an individual and a retailer or retailer's employee.

(ii) "Face-to-face exchange" does not include a sale through a:

617 (A) vending machine; or

618 (B) self-service display.

619 (c) "Retailer" means a person who:

620 (i) sells a cigarette, tobacco, [or] an electronic cigarette product, a nontherapeutic
621 nicotine product, or an alternative nicotine product to an individual for personal consumption;
622 or

623 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, [or] an
624 electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine
625 product.

626 (d) "Self-service display" means a display of a cigarette, tobacco, [or] an electronic
627 cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product to which
628 the public has access without the intervention of a retailer or retailer's employee.

629 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

630 (f) "Tobacco specialty shop" means a retailer with a physical location that derives at
631 least 80% of its total sales from the sale of cigarettes, tobacco, [or] electronic [cigarettes]
632 cigarette products, nontherapeutic nicotine products, or alternative nicotine products.

633 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an
634 electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine
635 product only in a face-to-face exchange.

636 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

637 (a) a mail-order, telephone, or Internet sale made in compliance with Section
638 [59-14-509](#);

639 (b) a sale from a vending machine or self-service display that is located in an area of a
640 retailer's facility:

641 (i) that is distinct and separate from the rest of the facility; and

642 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
643 present; or

644 (c) a sale at a tobacco specialty shop.

645 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
646 specialty shop unless the individual is:

647 (a) accompanied by a parent or legal guardian;

(b) present at the tobacco shop for a bona fide commercial purpose other than to purchase a cigarette, tobacco, ~~[or]~~ an electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product; or

(c) 18 years old or older and an active duty member of the United States Armed Forces, as demonstrated by a valid, government-issued military identification card.

(5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the individual to purchase a cigarette, tobacco, ~~[or]~~ an electronic cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product.

(6) A violation of Subsection (2) or (4) is a:

(a) class C misdemeanor on the first offense;

(b) class B misdemeanor on the second offense; and

(c) class A misdemeanor on the third and all subsequent offenses.

(7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor under Section 76-10-104.

(8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision of the state or by a state agency that affects the sale, placement, or display of cigarettes, tobacco, ~~[or]~~ an electronic ~~[cigarettes]~~ cigarette product, a nontherapeutic nicotine product, or an alternative nicotine product, that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.

(b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use ordinance by a municipal or county government.

Section 18. **Effective date.**

This bill takes effect on July 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel