

**ELECTRONIC CIGARETTE AND OTHER NICOTINE
PRODUCT TAX AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies tax provisions in the Electronic Cigarette and Nicotine Product Taxation and Licensing Act.

Highlighted Provisions:

This bill:

- ▶ provides for proportional reductions in the amounts distributed from the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account (the account) if the revenue deposited into the account is insufficient to fund the statutory amounts;
- ▶ extends the use of the account revenue to include funding compliance personnel within the State Tax Commission; and
- ▶ requires the State Tax Commission to:
 - increase enforcement of the collection of the electronic cigarette and nicotine product tax;
 - conduct a study on enforcement and collection of the electronic cigarette and nicotine product tax; and
 - report the State Tax Commission's findings and recommendations to the Revenue and Taxation Interim Committee.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

59-14-807, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

ENACTS:

59-14-809, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

59-14-807, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

59-14-809, Utah Code Annotated 1953

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

Section 1. Section **59-14-807** is amended to read:

59-14-807. Electronic Cigarette Substance and Nicotine Product Tax Restricted Account.

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

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

(a) ~~[revenues]~~ revenue collected from the tax imposed by Section **59-14-804**; and

(b) amounts appropriated by the Legislature.

(3) (a) For each fiscal year~~[-beginning with fiscal year 2021]~~, and subject to appropriation by the Legislature, the Division of Finance shall distribute from the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account:

~~[(a)]~~ (i) \$2,000,000, which shall be allocated to the local health departments by the Department of Health using the formula created in accordance with Section **26A-1-116**;

~~[(b)]~~ (ii) \$2,000,000 to the Department of Health for statewide cessation programs and prevention education;

56 ~~[(e)]~~ (iii) \$1,180,000 to the Department of Public Safety for law enforcement officers
57 aimed at disrupting organizations and networks that provide tobacco products, electronic
58 cigarette products, nicotine products, and other illegal controlled substances to minors;

59 ~~[(d)]~~ (iv) \$3,000,000, which shall be allocated to the local health departments by the
60 Department of Health using the formula created in accordance with Section 26A-1-116;

61 ~~[(e)]~~ (v) \$5,084,200 to the State Board of Education for school-based prevention
62 programs; and

63 ~~[(f)]~~ (vi) \$2,000,000 to the Department of Health for alcohol, tobacco, and other drug
64 prevention, reduction, cessation, and control programs that promote unified messages and
65 make use of media outlets, including radio, newspaper, billboards, and television.

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

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

71 (i) the regulation provisions described in Section 26-57-103;

72 (ii) the labeling requirement described in Section 26-57-104; and

73 (iii) the penalty provisions described in Section 26-62-305.

74 (b) The Department of Health shall use the money received in accordance with
75 Subsection ~~[(3)(b)]~~ (3)(a)(ii) for the Youth Electronic Cigarette, Marijuana, and Other Drug
76 Prevention Program created in Section 26-7-10.

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

80 (d) The State Board of Education shall use the money received in accordance with
81 Subsection ~~[(3)(e)]~~ (3)(a)(v) to distribute to local education agencies to pay for:

82 (i) stipends for positive behaviors specialists as described in Subsection

83 53G-10-407(4)(a)(i);
84 (ii) the cost of administering the positive behaviors plan as described in Subsection
85 53G-10-407(4)(a)(ii); and
86 (iii) the cost of implementing an Underage Drinking and Substance Abuse Prevention
87 Program in grade 4 or 5, as described in Subsection 53G-10-406(3)(b).
88 (5) (a) The fund shall earn interest.
89 (b) All interest earned on fund money shall be deposited into the fund.
90 (6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette
91 Substance and Nicotine Product Tax Restricted Account after the distribution described in
92 Subsection (3) may only be used for:
93 (a) funding commission personnel to enforce compliance with the tax collection
94 requirements of this part; and
95 (b) programs and activities related to the prevention and cessation of electronic
96 cigarette, nicotine products, marijuana, and other drug use.
97 Section 2. Section 59-14-809 is enacted to read:
98 **59-14-809. Commission study on enforcement and collection of tax.**
99 (1) The commission shall:
100 (a) implement increased enforcement of the tax imposed by this part; and
101 (b) study issues related to increased enforcement and compliance with the requirements
102 of this part.
103 (2) The study shall include a review of:
104 (a) the impact of increased enforcement on collections of the tax imposed by this part;
105 (b) options for long-term funding of increased enforcement of the tax imposed by this
106 part;
107 (c) the sufficiency of collections of the tax imposed by this part to fund distributions
108 from the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account under
109 Section 59-14-807;

110 (d) impacts of a lack of federal regulation of electronic cigarettes on enforcement and
111 compliance efforts; and

112 (e) potential impacts on compliance of changing the incidence of taxation to a tax
113 imposed on the retail sale of an electronic cigarette substance or prefilled electronic cigarette.

114 (3) The commission shall annually report the commission's findings and
115 recommendations on the study items described in Subsections (2)(a) through (d) to the
116 Revenue and Taxation Interim Committee on or before the September interim meeting.

117 (4) The commission shall report the commission's findings and recommendations on
118 the study item described in Subsection (2)(e) to the Revenue and Taxation Interim Committee
119 on or before the September 2023 interim meeting.

120 **Section 3. Coordinating S.B. 263 with H.B. 460 -- Technical amendments.**

121 If this S.B. 263 and H.B. 460, Settlement Fund Amendments, both pass and become
122 law, it is the intent of the Legislature that the Office of Legislative Research and General
123 Counsel, in preparing the Utah Code database for publication:

124 (1) modify Subsection [59-14-807](#)(3)(b) in this S.B. 263 to read:

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

128 (2) modify Subsection [59-14-809](#)(2)(c) in this S.B. 263 to read:

129 "(c) the sufficiency of collections of the tax imposed by this part to fund distributions
130 from the Electronic Cigarette Substance and Nicotine Product Proceeds Restricted Account
131 under Section [59-14-807](#);".