TOBACCO AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: ____________

LONG TITLE

General Description:

This bill enacts provisions related to tobacco products and other nicotine products.

Highlighted Provisions:

This bill:

- ▸ creates a temporary events permit for the sale of tobacco and nicotine products;
- ▸ authorizes telephone, mail, Internet, and other remote orders of a cigar or pipe tobacco;
- ▸ provides for the licensing, bonding, and taxation of cigar and pipe tobacco transactions between a remote seller and a consumer in the state;
- ▸ establishes a criminal penalty for failing to comply with the licensing requirement; and
- ▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-14-102, as last amended by Laws of Utah 2022, Chapter 199

59-14-302, as last amended by Laws of Utah 2020, Chapter 347

76-10-105.1, as last amended by Laws of Utah 2021, Chapter 348

ENACTS:

26A-2-101, Utah Code Annotated 1953

26A-2-201, Utah Code Annotated 1953

26A-2-202, Utah Code Annotated 1953

26A-2-203, Utah Code Annotated 1953

26A-2-204, Utah Code Annotated 1953

59-14-901, Utah Code Annotated 1953

59-14-902, Utah Code Annotated 1953

59-14-903, Utah Code Annotated 1953

59-14-904, Utah Code Annotated 1953

59-14-905, Utah Code Annotated 1953

59-14-906, Utah Code Annotated 1953

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

Section 1. Section **26A-2-101** is enacted to read:

CHAPTER 2. EVENTS PERMIT FOR SALE OF TOBACCO PRODUCTS

Part 1. General Provisions

26A-2-101. Definitions.

As used in this chapter:

(1) "Local authority" means the same as that term is defined in Section 32B-1-102.

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

(3) "Minor" means an individual under 21 years old.

(4) "Temporary event permit" means a written authorization to sell or offer for sale of a tobacco product for on-premises possession or consumption or use.

(5) "Tobacco product" means an item for which a retailer is required to be licensed to sell under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act.

Section 2. Section **26A-2-201** is enacted to read:

Part 2. Temporary Event Permit for Sale of Tobacco Products

26A-2-201. Temporary event permit requirement -- Application.

(1) Before a person may sell or offer for sale a tobacco product for on-premises possession or consumption or use at an event, the person shall obtain a temporary event permit from the local health department with jurisdiction over the area in which the event is to be held.

(2) To obtain a temporary event permit, a person shall submit to the local health department with jurisdiction over the area in which the event is to be held:

(a) written application in a form approved by the local health department;

(b) a temporary event permit fee and bond in accordance with Section 26A-2-202;

(c) written consent of the local authority;

(d) the times, dates, location, estimated attendance, nature, and purpose of the event;

(e) a description or floor plan designating:

(i) the area in which the person proposes that a tobacco product be stored; and

(ii) the site from which the person proposes that a tobacco product be sold;

(f) a signed consent form stating that the event permittee will permit any authorized representative of the local health department or any law enforcement officer to have unrestricted right to enter the premises during the event;

(g) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and

(h) any other information the local health department requires.

(3) If a person substantially changes the person's application under Subsection (2) after the person initially submits the application, the local health department may retain up to $50 of the event permit fee, regardless of whether the local health department issues an event permit.

(4) An entity applying for a permit need not meet the requirements of Subsection (2)(b) or (c) if the entity is:

(a) a state agency; or

(b) a political subdivision of the state.

(5) The local health department may not issue an event permit to a person who is disqualified from holding a license under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act.

(6) The local health department may consider the proximity of an educational, religious, or recreational facility, or any other relevant factor in deciding whether to issue a temporary event permit.

Section 3. Section **26A-2-202** is enacted to read:

26A-2-202. Event permit fee - Bond amount.

(1) The temporary event permit fee is $100.

(2) The temporary event permit fee is refundable if the local health department does not issue a temporary event permit.

(3) (a) A person applying for an event permit shall post a cash bond or surety bond:

(i) in the penal sum of $500; and

(ii) payable to the local health department.

(b) An event permittee shall procure and maintain a bond required under this section for as long as the event permit is in effect.

(4) A bond posted by an event permittee under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the event permittee's faithful compliance with this part.

(c) No part of a bond posted by an event permittee under this section may be withdrawn during the period the event permit is in effect.

(5) (a) A bond posted by an event permittee under this section may be forfeited if the event permit is revoked.

(b) Notwithstanding Subsection (5)(a), the local health department may make a claim against a bond posted by an event permittee for money owed the local health department under this part without first revoking the event permit.

Section 4. Section **26A-2-203** is enacted to read:

26A-2-203. Issuance of temporary event permit.

(1) Before the local health department issues or denies the issuance of a temporary event permit, the local health department shall:

(a) determine that the person filed an application in accordance with Section 26A-2-201;

(b) determine that the applicant is not disqualified from holding a license under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act;

(c) consider the purpose of the organization;

(d) consider the times, dates, location, estimated attendance, nature, and purpose of the event;

(e) to minimize the risk of minors being sold tobacco products at the event, determine that adequate and appropriate control measures and adequate and appropriate enforcement measures are in place at the event to assure that minors will not be sold tobacco products, except that adequate and appropriate control and enforcement measures may be different for small, large, indoor, or outdoor events;

(f) determine that the event permit is not being sought by the person as a means to circumvent other applicable requirements of Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act, notwithstanding that the applicant may hold one or more licenses issued under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act;

(g) consider, for the period of three years before the date of the event, the violation history of:

(i) the applicant; and

(ii) the venue where the event will be held; and

(h) consider any other factor the local health department considers necessary.

(2) (a) The local health department may issue a temporary event permit only for an event that does not last longer than 30 days.

(b) The local health department may not issue a temporary event permit to a person if the aggregate of the days that the person is authorized to sell or offer for sale a tobacco product under a temporary event permit exceeds a total of 90 days in any one calendar year.

(3) The local health department may not issue, and a person may not obtain, a temporary event permit to avoid or attempt to avoid the requirement to be licensed under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act.

(4) Once the local health department issues a temporary event permit, the local health department shall send a copy of the approved application and the event permit by written or electronic means to the state and local law enforcement authorities at least three days before the event.

Section 5. Section **26A-2-204** is enacted to read:

26A-2-204. Operational requirements for a special event permit.

(1) (a) A temporary event permittee, and a person involved in the storage, sale, or offer for sale of a tobacco product at an event for which an event permit is issued, shall comply with this part.

(b) Failure to comply as provided in Subsection (1)(a) may result in:

(i) immediate revocation of the temporary event permit; or

(ii) forfeiture of a bond.

(c) If the temporary event permit is revoked, the event permittee is disqualified from applying for an event permit for a period of three years from the date of revocation of the event permit.

(2) Notwithstanding that this part refers to "temporary event permittee," a person involved in the storage, sale, or offer for sale of a tobacco product at the event for which the event permit is issued is subject to the same requirement or prohibition.

(3) A temporary event permittee shall display a copy of the temporary event permit in a prominent place in the area in which a tobacco product is sold or offered for sale.

(4) A temporary event permittee may not on the premises of the event:

(a) engage in or allow any form of gambling, as defined in Section 76-10-1101, or fringe gambling, as defined in Section 76-10-1101;

(b) have any fringe gaming device, video gaming device, or gambling device or record as defined in Section 76-10-1101; or

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(5) An event permittee may not knowingly allow a person at an event to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

(a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or

(b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.

(6) (a) Except as allowed by Section 76-10-111 or 76-10-112, a temporary event permittee may not sell or offer for sale a tobacco product:

(i) at less than the cost of the tobacco product to the event permittee;

(ii) at a discount price on any date or at any time; or

(iii) at a special or reduced price for only certain hours of the day of an event.

(b) A temporary event permittee may not sell or offer for sale a tobacco product to a minor.

(7) A tobacco product is considered under the control of the event permittee during an event.

(8) A temporary event permittee may not permit a patron to use a tobacco product if use violates Title 26, Chapter 38, Utah Indoor Clean Air Act, or a local ordinance.

(9) A minor may not handle, sell, offer for sale, or furnish a tobacco product at an event.

(10) The location specified in an event permit may not be changed without prior written approval of the local health department.

(11) A temporary event permittee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the event permit to another person whether for monetary gain or not.

(12) A temporary event permittee shall display, in a prominent place, a sign in large letters that consists of any warning required by federal or state law regarding the use of a tobacco product.

(13) (a) A temporary event permittee shall make and maintain an expense and revenue ledger or record showing:

(i) expenditures made for tobacco products; and

(ii) the revenue from sale of tobacco products.

(b) The temporary event permittee shall make the expense and revenue ledger or record available to the local health department that issued the temporary events permit or the State Tax Commission upon request.

Section 6. Section **59-14-102** is amended to read:

59-14-102. Definitions.

As used in this chapter:

(1) "Alternative nicotine product" means the same as that term is defined in Section 76-10-101.

(2) (a) "Cigar" means the same as that term is defined in Section 76-10-101.

(b) "Cigar" does not include a little cigar.

[~~(2)~~] (3) "Cigarette" means a roll made wholly or in part of tobacco:

(a) regardless of:

(i) the size of the roll;

(ii) the shape of the roll;

(iii) whether the tobacco is flavored, adulterated, or mixed with any other ingredient; or

(iv) whether the tobacco is heated or burned; and

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

[~~(3)~~] (4) "Cigarette rolling machine" means a device or machine that has the capability to produce at least 150 cigarettes in less than 30 minutes.

[~~(4)~~] (5) "Cigarette rolling machine operator" means a person who:

(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.

[~~(5)~~] (6) "Consumer" means a person that is not required:

(a) under Section 59-14-201 to obtain a license under Section 59-14-202;

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

(c) to obtain a license under Section 59-14-803[~~.~~]; or

(d) to obtain a license under Section 59-14-903.

[~~(6)~~] (7) "Counterfeit cigarette" means:

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

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

[~~(7)~~] (8) (a) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.

(b) "Electronic cigarette" does not include a cigarette or a tobacco product.

[~~(8)~~] (9) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

[~~(9)~~] (10) "Electronic cigarette substance" means the same as that term is defined in Section 76-10-101.

[~~(10)~~] (11) "Importer" means a person that imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution.

[~~(11)~~] (12) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any other person doing business as a distributor or retailer of cigarettes on tribal lands located in the state.

[~~(12)~~] (13) "Little cigar" means a roll for smoking that:

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

(b) uses an integrated cellulose acetate filter or other similar filter; and

(c) is wrapped in a substance:

(i) containing tobacco; and

(ii) that is not exclusively natural leaf tobacco.

[~~(13)~~] (14) (a) Except as provided in Subsection [~~(13)(b)~~] (14)(b), "manufacturer" means a person 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 an electronic cigarette product or a nicotine product.

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

[~~(14)~~] (15) "Moist snuff" means tobacco that:

(a) is finely cut, ground, or 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)~~] (16) "Nicotine" means the same as that term is defined in Section 76-10-101.

[~~(16)~~] (17) "Nicotine product" means the same as that term is defined in Section 76-10-101.

[~~(17)~~] (18) "Nontherapeutic nicotine device" means the same as that term is defined in Section 76-10-101.

[~~(18)~~] (19) "Nontherapeutic nicotine device substance" means the same as that term is defined in Section 76-10-101.

[~~(19)~~] (20) "Nontherapeutic nicotine product" means the same as that term is defined in Section 76-10-101.

(21) "Pipe tobacco" means loose leaf tobacco that:

(a) is intended to be burned in a pipe; or

(b) because of the tobacco's appearance, type, packaging, or labeling, is suitable to be used, and likely to be offered or purchased for use, in a pipe.

[~~(20)~~] (22) "Prefilled electronic cigarette" means the same as that term is defined in Section 76-10-101.

[~~(21)~~] (23) "Prefilled nontherapeutic nicotine device" means the same as that term is defined in Section 76-10-101.

[~~(22)~~] (24) "Retailer" means a person that:

(a) sells or distributes a cigarette, a cigar, pipe tobacco, an electronic cigarette product, or a nicotine product to a consumer in the state; or

(b) intends to sell or distribute a cigarette, a cigar, pipe tobacco, an electronic cigarette product, or a nicotine product to a consumer in the state.

[~~(23)~~] (25) "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.

[~~(24)~~] (26) (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.

[~~(25)~~] (27) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Section 7. Section **59-14-302** is amended to read:

59-14-302. Tax basis -- Rates.

(1) As used in this section:

(a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco product charges after subtracting a discount.

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

(i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

(ii) who pays the original Utah destination freight charge.

(2) [~~There~~] Except as provided in Section 59-14-904, there is levied a tax upon the sale, use, or storage of tobacco products in the state.

(3) (a) Subject to Subsection (3)(b), the tax levied under Subsection (2) shall be paid by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

(b) The tax levied under Subsection (2) on a cigarette produced from a cigarette rolling machine shall be paid by the cigarette rolling machine operator.

(4) For tobacco products except for moist snuff, a little cigar, or a cigarette produced from a cigarette rolling machine, the amount of the tax under this section is .86 multiplied by the manufacturer's sales price.

(5) (a) Subject to Subsection (5)(b), the tax under this section on moist snuff is imposed:

(i) at a rate of $1.83 per ounce; and

(ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

(b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce, a proportionate amount of the tax described in Subsection (5)(a) is imposed:

(i) on that fractional part of one ounce; and

(ii) in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) (a) A little cigar is taxed at the same tax rates as a cigarette is taxed under Subsection 59-14-204(2).

(b) (i) Subject to Subsection (6)(b)(ii), a cigarette produced from a cigarette rolling machine is taxed at the same tax rates as a cigarette is taxed under Subsection 59-14-204(2).

(ii) A tax under this Subsection (6)(b) is imposed on the date the cigarette is produced from the cigarette rolling machine.

(7) (a) Moisture content of a tobacco product is determined at the time of packaging.

(b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

(i) for a period of three years after the last day on which the manufacturer distributes the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of the tobacco product available for review by the commission, upon demand; and

(ii) provide a document, to the person described in Subsection (3) to whom the manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco product, as verified by the scientific evidence described in Subsection (7)(b)(i).

(c) A manufacturer who fails to comply with the requirements of Subsection (7)(b) is liable for the nonpayment or underpayment of taxes on the tobacco product by a person who relies, in good faith, on the document described in Subsection (7)(b)(ii).

(d) A person described in Subsection (3) who is required to pay tax on a tobacco product:

(i) shall, for a period of three years after the last day on which the person pays the tax on the tobacco product, keep the document described in Subsection (7)(b)(ii) available for review by the commission, upon demand; and

(ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due to the person's good faith reliance on the document described in Subsection (7)(b)(ii).

Section 8. Section **59-14-901** is enacted to read:

Part 9. Remote Sales of Cigar and Pipe Tobacco Licensing and Taxation Act

59-14-901. Definitions.

As used in this part:

(1) "Actual cost" means the actual price paid by a retailer.

(2) "Actual cost list" means a list, prepared, maintained, and certified annually by each retailer, of the average of the actual cost of each item by stock keeping unit over the 12 calendar months before January 1 of the year in which the remote sale of a cigar or pipe tobacco occurs.

(3) "Age verification system" means a service that:

(a) is provided by an independent third party; and

(b) compares information available from a commercially available database, or an aggregate of available databases, that is used regularly by government agencies and businesses to verify the age and identity of the personal information provided by a consumer during the ordering process.

(4) (a) "Remote sale of a cigar or pipe tobacco" means the sale of a cigar or pipe tobacco to a consumer if:

(i) (A) the consumer submits the order for the sale by telephone or other method of voice transmission, mail, or the Internet or other online service; or

(B) the retailer is not in the physical presence of the consumer when the request for the sale is made; and

(ii) (A) the retailer delivers the cigar or pipe tobacco to the consumer by common carrier, private delivery service, or other method of remote delivery; or

(B) the retailer is not in the physical presence of the consumer when the consumer obtains possession of the cigar or pipe tobacco.

(b) "Remote sale of a cigar or pipe tobacco" does not include a sale by:

(i) a regular dealer in those articles in another state to a licensed dealer in this state; or

(ii) a wholesaler or distributor in this state to a regular dealer in those articles in another state.

(5) "Remote seller" means a retailer that obtains a license in accordance with Subsection 59-14-903 and conducts a remote sale of a cigar or pipe tobacco.

Section 9. Section **59-14-902** is enacted to read:

59-14-902. Authorization for remote sale of a cigar or pipe tobacco.

(1) A remote seller may make a remote sale of a cigar or pipe tobacco in this state if the remote seller:

(a) complies with the licensing and taxation requirements of this part;

(b) subject to Subsection (3), collects the sales and use taxes due under Chapter 12, Sales and Use Tax Act;

(c) reports to the commission, on an annual basis:

(i) the number of remote sales of cigars or pipe tobacco; and

(ii) the gross sales amount;

(d) complies with the age and access requirements for cigars or pipe tobacco described in Section 10-8-47 and Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical Agents; and

(e) uses an age verification system.

(2) A remote seller may not:

(a) make a remote sale of any product containing nicotine or tobacco other than a cigar or pipe tobacco; or

(b) make a sale that would be permitted under Section 59-14-201, 59-14-301, or 59-14-803 without obtaining a separate license.

(3) A remote seller shall obtain a sales and use tax license and collect and remit the applicable sales and use tax in accordance with Chapter 12, Sales and Use Tax Act, if the remote seller meets the requirements of Subsection 59-12-107(2).

(4) The commission shall establish a mechanism for a person to report a perceived violation of this section.

Section 10. Section **59-14-903** is enacted to read:

59-14-903. License to make a remote sale of a cigar or pipe tobacco.

(1) The commission shall issue a license to make a remote sale of a cigar or pipe tobacco to a retailer that submits an application, on a form created by the commission, that includes:

(a) the retailer's name;

(b) the address of the facility from which the retailer will make a remote sale of a cigar or pipe tobacco;

(c) the retailer's federal identification number;

(d) proof that the retailer uses an age verification system;

(e) proof of receipt of a sales tax license, if applicable; and

(f) any other information the commission requires to implement this chapter.

(2) A license described in Subsection (1) is:

(a) valid for three years;

(b) valid only for a single facility from which the retailer makes a remote sale of a cigar or pipe tobacco; and

(c) renewable if a licensee meets the criteria for licensing described in Subsection (1).

(3) The license required under this section is separate from a valid license a retailer may hold under Section 59-14-201, Section 59-14-301, or Section 59-14-803.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), the commission shall require a remote seller that is responsible under this part for collection of tax on a cigar or pipe tobacco to post a bond.

(ii) A remote seller that posts a bond under Section 59-14-301 is not required to post an additional bond under this section.

(b) The remote seller may post the bond required by Subsection (4)(a) in combination with any bond required by Section 59-14-201 or 59-14-803.

(c) Subject to Subsection (4)(d), the commission shall determine the form and the amount of the bond.

(d) The minimum amount of the bond shall be:

(i) except as provided in Subsection (4)(d)(ii) or (iii), $500;

(ii) if the remote seller posts the bond required by Subsection (4)(a) in combination with a bond required by either Section 59-14-201 or 59-14-803, $1,000; or

(iii) if the remote seller posts the bond required by Subsection (4)(a) in combination with the bonds required by both Sections 59-14-201 and 59-14-803, $1,500.

(5) In addition to other authorized reasons for the commission to deny or revoke a license or a license renewal under this title, the commission may deny or revoke a license to a retailer who makes or wishes to make remote sales if:

(a) the retailer violates this title;

(b) the retailer does not meet the requirements for licensure or the retailer submits misleading or false information on the retailer's application for licensure; or

(c) a retailer has had a license to sell any tobacco or nicotine product revoked by another state.

(6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the additional information described in Subsection (1)(f) that a retailer shall provide in the application.

(7) The commission may not charge a fee for a license under this section.

Section 11. Section **59-14-904** is enacted to read:

59-14-904. Taxation of a remote sale of a cigar or pipe tobacco.

(1) A tax is imposed on a remote sale of a cigar or pipe tobacco.

(2) (a) The amount of the tax imposed under this part is .86 multiplied by:

(i) the actual cost of the cigar or pipe tobacco; or

(ii) if the actual cost is unavailable, the actual cost of the cigar or pipe tobacco as identified in the actual cost list.

(b) A remote sale of a cigar or pipe tobacco is not subject to the tax imposed under Section 59-14-302.

(3) A remote seller shall collect the tax levied under Subsection (1) from a consumer at the time of a remote sale of a cigar or pipe tobacco.

(4) The commission shall deposit the revenue generated by the tax imposed under this section into the General Fund.

Section 12. Section **59-14-905** is enacted to read:

59-14-905. Remittance of tax -- Returns -- Invoice required -- Filing requirement -- Exception -- Penalty -- Overpayment.

(1) (a) The remote seller that collects the tax imposed on a cigar or pipe tobacco shall remit to the commission, in an electronic format approved by the commission:

(i) the tax collected in the previous calendar quarter; and

(ii) the quarterly tax return.

(b) The tax collected and the return are due on or before the last day of April, July, October, and January.

(2) (a) A remote seller shall furnish the consumer with an itemized invoice showing:

(i) the remote seller's name and address;

(ii) the name and delivery address of the consumer;

(iii) the date of sale;

(iv) the final cost and quantity for each item by stock keeping unit;

(v) the itemized sales and use tax; and

(vi) shipping charges, if stated separately.

(b) The remote seller shall retain a copy of each invoice and make the invoice available for inspection at the request of the commission or the commission's agent for a period of three years following the remote sale of a cigar or pipe tobacco.

(c) The remote seller shall retain purchasing records to verify the actual cost or actual cost list value for each item by stock keeping unit.

(3) (a) A consumer that purchases an untaxed cigar or pipe tobacco for use or other consumption shall:

(i) file with the commission, on forms prescribed by the commission, a statement showing the quantity and description of the item subject to tax under this part; and

(ii) pay the tax imposed by this part on that item.

(b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax due on or before the last day of the month immediately following the month during which the consumer purchased an untaxed cigar or pipe tobacco.

(c) A consumer shall maintain records necessary to determine the amount of tax the consumer is liable to pay under this part for a period of three years following the date on which the statement required by this section was filed.

(4) A tourist who imports an untaxed cigar or pipe tobacco into the state does not need to file the statement described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption while in this state.

(5) In addition to the tax required by this part, a person shall pay a penalty as provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402, if a person subject to this section fails to:

(a) pay the tax prescribed by this part;

(b) pay the tax on time; or

(c) file a return required by this part.

(6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

Section 13. Section **59-14-906** is enacted to read:

59-14-906. Criminal penalty for making a remote sale without a license or bond.

(1) It is unlawful for a person to make a remote sale of a cigar or pipe tobacco without:

(a) obtaining a license from the commission under Section 59-14-903; and

(b) complying with any bonding requirement described in Subsection 59-14-903(4).

(2) A violation of Subsection (1) is a class B misdemeanor.

Section 14. Section **76-10-105.1** is amended to read:

76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an

electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco specialty shop -- Penalties.

(1) As used in this section:

(a) (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:

(A) vending machine; or

(B) self-service display.

(b) "Retailer" means a person who:

(i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an individual for personal consumption; or

(ii) operates a facility with a vending machine that sells a tobacco product, an electronic cigarette product, or a nicotine product.

(c) "Self-service display" means a display of a tobacco product, an electronic cigarette product, or a nicotine product to which the public has access without the intervention of a retailer or retailer's employee.

(2) Except as provided in Subsection (3), a retailer may sell a tobacco product, an electronic cigarette product, or a nicotine product only in a face-to-face exchange.

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

(a) a mail-order, telephone, or Internet sale made in compliance with Section 59-14-509 or 59-14-902;

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

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

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

(c) a sale at a retail tobacco specialty business.

(4) An individual who is under 21 years old may not enter or be present at a retail tobacco specialty business unless the individual is:

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

(b) (i) present at the retail tobacco specialty business solely for the purpose of providing a service to the retail tobacco specialty business, including making a delivery;

(ii) monitored by the proprietor of the retail tobacco specialty business or an employee of the retail tobacco specialty business; and

(iii) not permitted to make any purchase or conduct any commercial transaction other than the service described in Subsection (4)(b)(i).

(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 retail tobacco specialty business may not allow the individual to purchase a tobacco product, an electronic cigarette product, or a 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 any subsequent offenses.

(7) An individual who violates Subsection (5) is guilty of an offense under Section 76-10-104.

Section 15. **Effective date.**

This bill takes effect on July 1, 2023.