

**ELECTRONIC CIGARETTE SUBSTANCE AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts provisions relating to the sale and use of an electronic cigarette and an electronic cigarette substance.

**Highlighted Provisions:**

This bill:

- ▶ enacts a tax on electronic cigarette substances;
- ▶ specifies how the tax on electronic cigarette substances will be administered; and
- ▶ enacts restrictions on mail order and Internet sales of electronic cigarette products.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**59-14-401**, as last amended by Laws of Utah 2000, Chapter 229

**59-14-402**, as renumbered and amended by Laws of Utah 1987, Chapter 2

**59-14-403**, as renumbered and amended by Laws of Utah 1987, Chapters 2 and 3

**59-14-409**, as last amended by Laws of Utah 2008, Chapter 382

**59-14-801**, as enacted by Laws of Utah 2015, Chapter 132

**76-10-102**, as last amended by Laws of Utah 1986, Chapter 66



28 ENACTS:

29 [26-57-104](#), Utah Code Annotated 1953

30 [59-14-804](#), Utah Code Annotated 1953

31 [59-14-805](#), Utah Code Annotated 1953

32 [76-10-113](#), Utah Code Annotated 1953



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

35 Section 1. Section **26-57-104** is enacted to read:

36 **26-57-104. Contraband goods.**

37 (1) An electronic cigarette or an electronic cigarette substance is a contraband good if  
38 the electronic cigarette or electronic cigarette substance:

39 (a) does not have the warning label required under Section [26-57-103](#) affixed to the  
40 electronic cigarette or electronic cigarette product; and

41 (b) (i) has, for more than 72 hours, been in the possession of a wholesaler, distributor,  
42 or retailer in the state; or

43 (ii) was sold by a wholesaler, distributor, or retailer in the state.

44 (2) Contraband goods under Subsection (1) may be seized by the department or the  
45 department's employees, or by any peace officer of the state or the state's political subdivisions,  
46 without a warrant.

47 (3) Contraband goods that are seized under Subsection (2) shall be destroyed.

48 Section 2. Section **59-14-401** is amended to read:

49 **59-14-401. Refund of taxes paid -- Exemption for exported cigarettes, tobacco**  
50 **products, and electronic cigarette substances.**

51 (1) (a) When any cigarette [~~or~~], tobacco product, or electronic cigarette substance taxed  
52 under this chapter is sold and shipped to a regular dealer in those articles in another state, the  
53 seller in this state shall be entitled to a refund of the actual amount of the taxes paid, upon  
54 condition that the seller in this state:

55 (i) is a licensed dealer;

56 (ii) signs an affidavit that the cigarette [~~or~~], tobacco product, or electronic cigarette  
57 substance was so sold and shipped;

58 (iii) furnishes from the purchaser a written acknowledgment that the purchaser has

59 received:

- 60 (A) the cigarette [or], tobacco product, or electronic cigarette substance; and  
 61 (B) the amount of any stamps for which a refund is requested;  
 62 (iv) reports the name and address of the purchaser; and  
 63 (v) reports the name of the manufacturer of the cigarette, as defined under Section  
 64 59-22-202, reported under Section 59-14-407 if the cigarette is manufactured by a  
 65 manufacturer required to place funds into escrow under Section 59-22-203.

66 (b) The taxes shall be refunded in the manner provided in Subsection 59-14-206(2) for  
 67 unused stamps.

68 (2) Wholesalers or distributors in this state who export taxable cigarettes [~~and~~],  
 69 tobacco products, or electronic cigarette substances to a regular dealer in another state shall be  
 70 exempt from the payment of any tax upon the sale of the articles upon furnishing such proof of  
 71 the sale and exportation as the commission may require.

72 Section 3. Section **59-14-402** is amended to read:

73 **59-14-402. Reports of imports and exports of taxable cigarettes, tobacco**  
 74 **products, and electronic cigarette substances.**

75 Every common carrier hauling, transporting, or shipping into or out of the state any  
 76 taxable cigarettes [or], tobacco products, or electronic cigarette substances from or to any other  
 77 state or foreign country shall, when required by the commission, report in writing to the  
 78 commission all those shipments or deliveries on blanks furnished by the commission. The  
 79 report shall give the date, to whom the products were consigned and delivered, the quantity as  
 80 shown by the bill of lading, and any other information the commission may require. The  
 81 commission is expressly authorized to exact this information from common carriers.

82 Section 4. Section **59-14-403** is amended to read:

83 **59-14-403. Duplicate invoice requirements -- Failure to comply -- Penalties.**

84 All persons dealing in taxable cigarettes [or], tobacco products, or electronic cigarette  
 85 substances who purchase or receive these commodities from outside the state, whether the  
 86 product is delivered through a wholesaler or distributor in this state, or by drop shipment or  
 87 otherwise, shall mail or deliver a duplicate invoice of all those purchases or receipts to the  
 88 commission within 10 days after receipt of the commodities if requested by the commission.  
 89 Failure to furnish duplicate invoices or receipts as requested is subject to the penalties provided

90 under Section [59-1-401](#).

91 Section 5. Section **59-14-409** is amended to read:

92 **59-14-409. Definitions -- Credit or refund for tax paid on cigarette, tobacco**  
93 **product, or electronic cigarette substance that is destroyed or returned to the**  
94 **manufacturer -- Interest -- Rulemaking authority.**

95 (1) As used in this section, "licensed person" means a person:

96 (a) licensed by the commission in accordance with Section [59-14-202](#) or [59-14-803](#);

97 and

98 (b) that is a:

99 (i) distributor;

100 (ii) jobber;

101 (iii) manufacturer;

102 (iv) retailer;

103 (v) wholesaler; or

104 (vi) a person similar to a person described in Subsections (1)(b)(i) through (v) as  
105 determined by the commission by rule.

106 (2) A licensed person may apply to the commission for a credit or refund as provided  
107 in Subsection (3) if:

108 (a) on or after July 1, 2005, the following are removed from retail sale or from storage:

109 (i) a cigarette; [~~or~~]

110 (ii) a tobacco product; or

111 (iii) after July 1, 2020, an electronic cigarette substance;

112 (b) before a cigarette [~~or~~], tobacco product, or electronic cigarette substance is removed

113 from retail sale or from storage in accordance with Subsection (2)(a), the licensed person

114 remits a tax:

115 (i) to the commission;

116 (ii) on the:

117 (A) cigarette; [~~or~~]

118 (B) tobacco product; [~~and~~] or

119 (C) electronic cigarette substance; and

120 (iii) in accordance with:

- 121 (A) Part 2, Cigarettes; [or]
- 122 (B) Part 3, Tobacco Products; [~~and~~] or
- 123 (C) Part 8, Electronic Cigarette Licensing and Tax Act; and
- 124 (c) the licensed person verifies to the commission that the cigarette [or], tobacco
- 125 product, or electronic cigarette substance described in Subsection (2)(a) has been:
- 126 (i) returned to the manufacturer of the cigarette [or], tobacco product, or electronic
- 127 cigarette substance; or
- 128 (ii) destroyed.
- 129 (3) The amount of the credit or refund described in Subsection (2) is equal to:
- 130 (a) for a cigarette removed from retail sale or from storage, the amount of tax the
- 131 licensed person paid on the cigarette in accordance with Part 2, Cigarettes; [or]
- 132 (b) for a tobacco product removed from retail sale or from storage, the amount of tax
- 133 the licensed person paid on the tobacco product in accordance with Part 3, Tobacco
- 134 Products[-]; or
- 135 (c) for an electronic cigarette substance removed from retail sale or from storage, the
- 136 amount of tax the licensed person paid on the electronic cigarette substance in accordance with
- 137 Part 8, Electronic Cigarette Licensing and Tax Act.
- 138 (4) (a) The commission shall grant a credit or refund under this section if the
- 139 commission determines that a licensed person meets the requirements of Subsection (2).
- 140 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 141 commission may make rules establishing procedures and requirements for a licensed person to
- 142 verify to the commission that a cigarette [or], tobacco product, or electronic cigarette substance
- 143 described in Subsection (2)(a) has been:
- 144 (i) returned to the manufacturer of the cigarette [or], tobacco product, or electronic
- 145 cigarette substance; or
- 146 (ii) destroyed.
- 147 (5) (a) If the commission makes a credit or refund under this section within a 90-day
- 148 period after the day on which a licensed person submits an application to the commission for
- 149 the credit or refund, interest may not be added to the amount of credit or refund.
- 150 (b) If the commission makes a credit or refund under this section more than 90 days
- 151 after the day on which a licensed person submits an application to the commission for the

152 credit or refund, interest shall be added to the amount of credit or refund as provided in Section  
153 [59-1-402](#).

154 (6) (a) The commission may create a form for:

155 (i) a licensed person to:

156 (A) submit a claim for a credit or refund; or

157 (B) verify to the commission that a cigarette [or], tobacco product, or electronic  
158 cigarette substance has been:

159 (I) returned to the manufacturer of the cigarette [or], tobacco product, or electronic  
160 cigarette substance; or

161 (II) destroyed; or

162 (ii) processing a claim for a credit or refund for payment.

163 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
164 commission may make rules defining a person similar to a person described in Subsections  
165 (1)(b)(i) through (v).

166 Section 6. Section **59-14-801** is amended to read:

167 **Part 8. Electronic Cigarette Licensing and Tax Act**

168 **59-14-801. Title.**

169 This part is known as the "Electronic Cigarette Licensing and Tax Act."

170 Section 7. Section **59-14-804** is enacted to read:

171 **59-14-804. Tax basis -- Rate.**

172 (1) There is levied a tax upon the sale, use, or storage of an electronic cigarette  
173 substance in the state.

174 (2) The tax levied under Subsection (1) shall be paid by the manufacturer, jobber,  
175 distributor, wholesaler, retailer, user, or consumer of the electronic cigarette substance.

176 (3) (a) The rate of the tax under this section is \$0.61 per milliliter of the electronic  
177 cigarette substance.

178 (b) If the volume of the electronic cigarette substance is in a quantity that is a fractional  
179 part of one milliliter, a proportionate amount of the tax described in Subsection (3)(a) is  
180 imposed:

181 (i) on that fractional part of one milliliter; and

182 (ii) in accordance with rules made by the commission in accordance with Title 63G,

183 Chapter 3, Utah Administrative Rulemaking Act.

184 Section 8. Section **59-14-805** is enacted to read:

185 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**  
186 **Exception -- Penalty -- Overpayment.**

187 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user  
188 that collects the tax imposed on an electronic cigarette substance shall remit to the commission,  
189 in an electronic format approved by the commission:

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

191 (ii) the quarterly tax return.

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

194 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person  
195 selling an electronic cigarette substance to a person other than the ultimate consumer shall  
196 furnish the purchaser with an itemized invoice showing:

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

198 (ii) the name and address of the purchaser;

199 (iii) the date of sale;

200 (iv) the name and price of the product; and

201 (v) the discount, if any.

202 (b) The invoice shall show whether the price includes the tax.

203 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice  
204 available for inspection at the request of the commission or the commission's agent for a period  
205 of three years following the sale.

206 (3) (a) A consumer that purchases an untaxed electronic cigarette substance for use or  
207 other consumption shall:

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

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

211 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax  
212 due on or before the last day of the month immediately following the month during which the  
213 consumer purchased an untaxed electronic cigarette substance.

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

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

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

223 (a) pay the tax prescribed by this part;

224 (b) pay the tax on time; or

225 (c) file a return required by this part.

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

228 Section 9. Section 76-10-102 is amended to read:

229 **76-10-102. Cigarettes and tobacco -- Advertising restrictions -- Warnings in**  
230 **smokeless tobacco advertisements.**

231 (1) It is a class B misdemeanor for any person to display on any billboard, streetcar  
232 sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of  
233 cigarettes, cigarette papers, cigars, chewing tobacco, [or] smoking tobacco, electronic  
234 cigarettes, or any disguise or substitute of [either] those products, except that a dealer in  
235 cigarettes, cigarette papers, tobacco [or],<sub>2</sub> cigars, electronic cigarettes, or their substitutes, may  
236 have a sign on the front of his place of business stating that he is a dealer in the articles;  
237 provided that nothing herein shall be construed to prohibit the advertising of cigarettes,  
238 cigarette papers, chewing tobacco or smoking tobacco, electronic cigarettes, or any substitute  
239 of either, in any newspaper, magazine or periodical printed or circulating in this state.

240 (2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or  
241 periodical published in this state must bear a warning which states: "Use of smokeless tobacco  
242 may cause oral cancer and other mouth disorders and is addictive." This warning must be in a  
243 conspicuous location and in conspicuous and legible type, in contrast with the typography,  
244 layout, and color of all other printed material in the advertisement. For purposes of this



245 subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that  
246 is intended to be placed in the oral cavity or nasal passage. In the event the United States  
247 Congress passes legislation which requires warnings in advertisements of smokeless tobacco,  
248 the specific language required to be placed in advertisements by that legislation shall take  
249 precedence over this subsection.

250 Section 10. Section **76-10-113** is enacted to read:

251 **76-10-113. Restriction on mail order or Internet sales of electronic cigarette**  
252 **substances.**

253 (1) As used in this section:

254 (a) "Distributor" means a person, wherever residing or located, who:

255 (i) is licensed in this state to purchase a non-taxed electronic cigarette substance; and

256 (ii) stores, sells, or otherwise disposes of an electronic cigarette substance.

257 (b) "Licensed person" means the same as that term is defined in Section [59-14-409](#).

258 (c) "Retailer" means any person who sells an electronic cigarette substance to

259 consumers for personal consumption.

260 (2) (a) A person may not:

261 (i) cause an electronic cigarette substance to be ordered or purchased by anyone other  
262 than a licensed person; or

263 (ii) knowingly provide substantial assistance to a person who violates this section.

264 (b) An order or purchase prohibited under Subsection (2)(a) includes an order or

265 purchase:

266 (i) by mail or delivery service;

267 (ii) through the Internet or computer network;

268 (iii) by telephone; or

269 (iv) through any other electronic method.

270 (3) (a) Each order or purchase of an electronic cigarette substance in violation of

271 Subsection (2) shall constitute a separate violation under this section.

272 (b) In addition to the penalties in Subsection (4), a person who violates this section is  
273 subject to:

274 (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;

275 (ii) an injunction to restrain a threatened or actual violation of this section; and

276           (iii) recovery by the state for:  
277           (A) the cost of investigation;  
278           (B) the cost of expert witness fees;  
279           (C) the cost of the action; and  
280           (D) reasonable attorney fees.  
281           (4) A person who knowingly violates this section has engaged in an unfair and  
282 deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court  
283 shall order any profits, gains, gross receipts, or other benefits from the violation to be disgorged  
284 and paid to the state treasurer for deposit into the General Fund.