

Chapter 14 Cigarette and Tobacco Tax and Licensing Act

Part 1 General Provisions

59-14-101 Short title.

This chapter is known as the "Cigarette and Tobacco Tax and Licensing Act."

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-102 Definitions.

As used in this chapter:

- (1) "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; or
 - (C) 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) "Cigarette rolling machine" means a device or machine that has the capability to produce at least 150 cigarettes in less than 30 minutes.
- (3) "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.
- (4) "Consumer" means a person that is not required:
 - (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or
 - (b) under Section 59-14-301 to obtain a license under Section 59-14-202.
- (5) "Counterfeit cigarette" means:
 - (a) a cigarette that has a false manufacturing label; or
 - (b) a package of cigarettes bearing a counterfeit tax stamp.
- (6) "Importer" means a person who imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution.
- (7) "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.
- (8) "Little cigar" means a roll for smoking:
 - (a) made wholly or in part of tobacco;
 - (b) that uses an integrated cellulose acetate filter or other similar filter; and
 - (c) that is wrapped in a substance:
 - (i) containing tobacco; and

- (ii) that is not exclusively natural leaf tobacco.
- (9)
- (a) Except as provided in Subsection (9)(b), "manufacturer" means a person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.
 - (b) "Manufacturer" does not include a cigarette rolling machine operator.
- (10) "Moist snuff" means tobacco that:
- (a) is finely:
 - (i) cut;
 - (ii) ground; 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.
- (11) "Retailer" means a person that:
- (a) sells or distributes a cigarette to a consumer in the state; or
 - (b) intends to sell or distribute a cigarette to a consumer in the state.
- (12) "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)
- (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) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Amended by Chapter 148, 2013 General Session

59-14-103 Waiver or reduction of penalty.

The commission may, upon making a record of its actions, and upon reasonable cause shown, waive, reduce, or compromise any of the penalties or interest imposed under:

- (1) Subsection 59-14-212(4)(b)(ii);
- (2) Subsection 59-14-214(5)(b)(ii);
- (3) Subsection 59-14-407(5)(b)(ii);
- (4) Subsection 59-14-606(7)(b)(ii); or
- (5) Subsection 59-14-608(1)(d).

Enacted by Chapter 164, 2011 General Session

Part 2 Cigarettes

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) A license may not be issued until the applicant files a bond with the commission. The commission shall determine the form and the amount of the bond, the minimum amount of which shall be \$500. 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.

Amended by Chapter 148, 2013 General Session

59-14-202 Issuance of licenses -- Common carrier licenses -- Contents -- Valid for three years -- Revocation -- Distribution requirements.

- (1) Cigarette licenses may be issued only to a person owning or operating the place or cigarette vending machine from which the cigarette sales are made.
- (2)
 - (a) A license is required for each separate place of business.
 - (b) A licensee shall notify the commission within 30 days in the event that it changes the location of the business.
- (3) Applications for a license under this chapter shall be submitted on a form authorized by the commission. Each application shall state:
 - (a) the name and address of the applicant;
 - (b) the address of each place of business where the applicant's business will be conducted within this state; and
 - (c) any other information the commission may require relevant to license qualification.

- (4) A common carrier is not required to obtain more than one license for sales on conveyances operated by that carrier within the state. All conveyances owned by a common carrier are considered as one place of business for the purpose of this chapter.
- (5) No license may be granted, maintained, or renewed:
 - (a) if any combination of people owning directly or indirectly, in the aggregate, more than 10% of the ownership interests in the applicant:
 - (i) has been convicted of knowingly:
 - (A) selling stolen or counterfeit cigarettes;
 - (B) receiving stolen or counterfeit cigarettes; or
 - (C) being involved in the smuggling or counterfeiting of cigarettes;
 - (ii) is a cigarette manufacturer or importer that is not a:
 - (A) participating manufacturer as defined in subsection II(jj) of the "Master Settlement Agreement"; or
 - (B) in full compliance with the provisions of this chapter dealing with nonparticipating manufacturers;
 - (iii) has imported, or caused to be imported, into the United States any cigarette in violation of 19 U.S.C. 1681a; or
 - (iv) has imported, or caused to be imported into the United States, or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331, et. seq.; and
 - (b) until the applicant:
 - (i) has paid any delinquent cigarette taxes; and
 - (ii) has served the period of suspension resulting from any prior revoked license.
- (6) Each license shall be numbered, show the residence and place of business of the licensee, and is nontransferable.
- (7)
 - (a) Each license is in effect for three years from the date of issuance, unless the license is earlier revoked by the commission.
 - (b) The license expires on the expiration date shown on the license, unless the licensee renews it in accordance with commission rules.
 - (c) The commission shall by rule establish procedures for the renewal and reinstatement of licenses.
- (8)
 - (a) In addition to any civil or criminal penalty provided by law, the commission shall, after providing notice and a hearing, revoke the license of any person:
 - (i) found to have violated this title; or
 - (ii) who no longer qualifies for licensure under Subsection (5).
 - (b) In the case of a revocation under Subsection (8)(a)(i), a license may not be issued to that person within a period of two years after the violation.
- (9) A licensee may not barter, sell, exchange, or offer for sale:
 - (a) cigarettes in an individual package or container that contains less than 20 cigarettes; or
 - (b) roll-your-own cigarettes in an individual package or container that contains less than 0.6 ounces of tobacco.
- (10)
 - (a) The commission shall maintain a list that includes the identity of all people licensed under this section.
 - (b) The list shall:
 - (i) include the type of license possessed; and

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

Amended by Chapter 217, 2004 General Session

59-14-203 Failure to obtain a license -- Penalty.

Any person engaging in the business of manufacturing, importing, distributing, or selling or offering to sell cigarettes without holding a valid license that is currently not suspended or revoked is guilty of a class B misdemeanor for each offense.

Amended by Chapter 217, 2004 General Session

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 59-14-301 to sell tobacco 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 revocation becomes final.

Amended by Chapter 96, 2011 General Session

59-14-204 Tax basis -- Rate -- Future increase -- Cigarette Tax Restricted Account -- Appropriation and expenditure of revenues.

- (1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax upon the sale, use, storage, or distribution of cigarettes in the state.
- (2) The rates of the tax levied under Subsection (1) are, beginning on July 1, 2010:
 - (a) 8.5 cents on each cigarette, for all cigarettes weighing not more than three pounds per thousand cigarettes; and
 - (b) 9.963 cents on each cigarette, for all cigarettes weighing in excess of three pounds per thousand cigarettes.
- (3) Except as otherwise provided under this chapter, the tax levied under Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler, retailer, user, or consumer.
- (4) The tax rates specified in this section shall be increased by the commission by the same amount as any future reduction in the federal excise tax on cigarettes.
- (5)
 - (a) There is created within the General Fund a restricted account known as the "Cigarette Tax Restricted Account."
 - (b) The Cigarette Tax Restricted Account consists of:

- (i) the first \$7,950,000 of the revenues collected from a tax under this section; and
- (ii) any other appropriations the Legislature makes to the Cigarette Tax Restricted Account.
- (c) For each fiscal year beginning with fiscal year 2011-12 and subject to appropriation by the Legislature, the Division of Finance shall distribute money from the Cigarette Tax Restricted Account as follows:
 - (i) \$250,000 to the Department of Health to be expended for a tobacco prevention and control media campaign targeted towards children;
 - (ii) \$2,900,000 to the Department of Health to be expended for tobacco prevention, reduction, cessation, and control programs;
 - (iii) \$2,000,000 to the University of Utah Health Sciences Center for the Huntsman Cancer Institute to be expended for cancer research; and
 - (iv) \$2,800,000 to the University of Utah Health Sciences Center to be expended for medical education at the University of Utah School of Medicine.
- (d) In determining how to appropriate revenue deposited into the Cigarette Tax Restricted Account that is not otherwise appropriated under Subsection (5)(c), the Legislature shall give particular consideration to enhancing Medicaid provider reimbursement rates and medical coverage for the uninsured.

Amended by Chapter 168, 2016 General Session

59-14-204.5 Application of excise tax on tribal lands.

- (1)
 - (a) Cigarettes sold to or received by members of a federally recognized Indian tribe that are purchased or received on the tribal lands are not subject to the tax imposed by Section 59-14-204.
 - (b) Cigarettes exempt from tax under Section 5704, Internal Revenue Code, and distributed in accordance with federal regulations are not subject to the tax imposed by Section 59-14-204.
- (2)
 - (a)
 - (i) The tax applicable to cigarettes sold to or received by nontribal members on tribal lands is equal to the state tax imposed by Section 59-14-204, minus any tribal tax actually paid.
 - (ii) For purposes of this section, nontribal members includes any person who is not a member of the Indian tribe that is selling the cigarettes.
 - (b) If the application of the tax offset for tribal taxes permitted in Subsection (2)(a) results in a negative balance, the taxes owed to the state are zero.
 - (c)
 - (i) Cigarettes taxed pursuant to this Subsection (2) shall bear a tax stamp as required by Section 59-14-205 in an amount equal to the tax imposed by Section 59-14-204.
 - (ii) The commission shall at least semi-annually rebate to an Indian tribal entity that is in compliance with this chapter the lesser of:
 - (A) an amount equal to the tribal tax imposed on sales under this Subsection (2); or
 - (B) the face value of the tax stamps affixed to cigarettes sold under this Subsection (2).

Amended by Chapter 317, 2010 General Session

59-14-205 Stamping procedure -- Rules -- Exceptions -- Penalty -- Collection procedure.

- (1) In the case of manufacturers, jobbers, importers, distributors, wholesalers, and retailers, the taxes imposed on cigarettes by this chapter shall be paid by affixing stamps in the manner and at the time prescribed in this section.
- (2) All manufacturers, importers, distributors, wholesalers, and retailers shall securely affix the stamps to each individual package or container of cigarettes sold in the state, and may not sell or provide cigarette stamps to any other person.
- (3)
 - (a) Stamps shall be securely affixed to each individual package of cigarettes within 72 hours after the cigarettes are received within the state.
 - (b) All cigarettes shall be stamped before sale within the state.
 - (c) Cigarettes manufactured within the state shall be stamped by the manufacturer when and as sold.
- (4) The commission may, if it is practical and reasonable for the enforcement of the collection of taxes, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to permit cigarettes to remain unstamped until the original case or crate is broken, unpacked, or sold.
- (5) The commission may permit a person to sell and export cigarettes to a regular dealer in cigarettes outside the state without affixing stamps.
- (6)
 - (a) If cigarettes are allowed to remain unstamped under Subsection (4) or (5), the commission may require the person holding the unstamped cigarettes to secure a surety bond from a surety company authorized to do business in this state.
 - (b) The surety bond described in Subsection (6)(a) shall be conditioned to secure the payment of all taxes and penalties provided in this chapter.
- (7) A manufacturer, jobber, importer, distributor, wholesaler, or retailer may not remove, conceal, or obscure a cigarette package:
 - (a) notice described under Subsection 59-14-210(1)(a)(i); or
 - (b) warning label that is placed on the package in compliance with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1333.
- (8)
 - (a) Any person failing to properly affix and cancel stamps to the cigarettes, under this section and rules promulgated by the commission, may be required by the commission to pay as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of \$25 for each offense, to be assessed and collected by the commission in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
 - (b) Each article, package, or container found not having proper stamps affixed to the article, package, or container is a separate offense.
 - (c) The presence of any package or container in a place of business conducting retail sales shall be prima facie evidence that it is intended for sale and subject to taxes under this chapter.

Amended by Chapter 212, 2009 General Session

59-14-206 Sales of stamps -- Deposit of revenues -- Redemption of unused stamps -- Discount on lump purchases of stamps -- Unlawful acts.

- (1) The commission may prepare stamps for use on packages and containers of cigarettes according to its specifications, designs, and denominations and shall keep an accurate record of all stamps for which the commission is responsible. The cost of the stamps shall be charged to any appropriation made to defray the costs of administering this chapter.

- (2) The commission shall sell stamps only to persons holding licenses issued as provided in this chapter.
 - (a) The money received from the sale of the stamps, and all other money received from penalties, fees, and taxes provided by this chapter shall be deposited in the General Fund.
 - (b) The commission may deliver stamps in face value not to exceed 90% of the penal sum of the licensee's bond to any licensee without payment. The licensee shall pay for stamps within 60 days of the date the stamps were delivered on credit to the licensee.
 - (c) Unused stamps may be redeemed within three years of their purchase by presentation to the commission of a claim by the person to whom they were originally sold. The redemption claim shall be accompanied by the unused stamps.
 - (d) The commission shall certify a redemption claim with its approval to the state auditor, who shall draw a warrant upon the state treasurer for the payment of the claim.
- (3) The commission shall allow a discount of 4% upon the entire amount to each licensee for each single purchase of stamps amounting to \$25 or more.
- (4) It is unlawful for any person to sell or dispose of stamps to any other person. However, stamps may be distributed to the various places of sale by the main office whenever a person owns or operates more than one place of sale. Each place of sale shall have a separate license and cancellation stamp.

Amended by Chapter 330, 1997 General Session

59-14-207.5 Transactions only with licensed manufacturers, importers, distributors, and retailers.

- (1) A manufacturer or importer may sell or distribute cigarettes to a licensee if that person is located or doing business in the state, including on any tribal lands located in the state.
- (2) An importer may obtain cigarettes only from a licensed manufacturer.
- (3)
 - (a) A distributor may obtain cigarettes only from a licensed manufacturer, importer, or distributor.
 - (b) A distributor may sell or distribute cigarettes to a person who is a licensed distributor or retailer, if that person is located or doing business in the state, including on any tribal lands in the state.
- (4) A retailer may obtain cigarettes only from a properly licensed person.

Enacted by Chapter 217, 2004 General Session

59-14-207.6 Unstamped cigarettes.

- (1) A person who ships unstamped cigarette packages into the state, other than to a licensed manufacturer, importer, distributor, or retailer who is authorized to affix stamps, shall first file with the commission a notice of shipment.
- (2) Subsection (1) does not apply to a common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill, which states the quantity, source, and destination of the cigarettes.

Enacted by Chapter 217, 2004 General Session

59-14-208 Rules for stamping and packaging procedures -- Penalty.

- (1) The commission may by rule provide for the method of breaking packages, the forms and kinds of containers, and the method of affixing or cancelling stamps. These rules shall allow for the enforcement of payment by inspection.
- (2) A person is guilty of a class B misdemeanor who:
 - (a) engages in or permits any practice which is prohibited by law and makes it difficult to enforce the provisions of this chapter by inspection;
 - (b) refuses to allow full inspection of his premises by any peace officer or of any agent of the commission upon demand; or
 - (c) hinders or in any way delays or prevents inspection when the demand is made.

Amended by Chapter 305, 2008 General Session

59-14-208.5 Payment of cigarette tax by consumers.

- (1) Except as provided in Subsection (4), in the case of consumers, the taxes imposed on cigarettes by this part shall be paid in the manner and at the time prescribed in this section.
- (2) The payment shall be accompanied by a form prescribed by the commission.
- (3) The payment shall be paid on or before the last day of the month immediately following the month during which the cigarettes were purchased.
- (4) A consumer is not required to pay a cigarette tax under this section:
 - (a) on cigarettes that are stamped pursuant to Section 59-14-205; or
 - (b) if the consumer is a tourist who imports cigarettes for the tourist's own use or consumption while in the state.
- (5) 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 the return required by this part was filed.
- (6) In addition to the tax required by this part, a consumer 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 consumer 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.
- (7) 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.

Enacted by Chapter 6, 2007 General Session

59-14-209 Penalty for willful violation -- Counterfeit cigarettes.

- (1) A person is guilty of a third degree felony if the person:
 - (a) knowingly, or with intent to defraud the state violates Subsection 59-14-211(4);
 - (b) knowingly or willfully removes or otherwise prepares any adhesive stamp with the intent to use or cause to be used after it has already been used;
 - (c) knowingly or willfully buys, sells, offers for sale, or gives away any washed or restored stamp to any person;
 - (d) knowingly or willfully uses or has in his possession any washed or restored stamp that has been removed from the package or container to which it had been previously affixed;
 - (e) reuses any stamp that has already been used to pay a tax provided in this chapter, in order to indicate that person's payment of any tax; or
 - (f) buys, sells, or offers for sale or has in his possession any counterfeit stamp.

- (2) In addition to any other provision of law, the sale or possession for sale of counterfeit cigarettes, as they are defined in Section 59-14-102, by a manufacturer, importer, distributor, or retailer shall result:
 - (a) in the seizure by the commission or law enforcement agency of the manufacturer's, importer's, distributor's, or retailer's:
 - (i) counterfeit cigarettes; and
 - (ii) any personal property used in direct connection with the sale or possession for sale of counterfeit cigarettes; and
 - (b) the forfeiture of the seized assets to the state.

Amended by Chapter 217, 2004 General Session

59-14-210 Prohibited sales of cigarettes.

- (1) Except as provided in Subsection (3), a person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes:
 - (a) in a package which:
 - (i) bears a statement, label, stamp, sticker, or other notice that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including the following and similar notices:
 - (A) "For Export Only";
 - (B) "U.S. Tax-Exempt"; and
 - (C) "For Use Outside the U.S."; or
 - (ii) does not comply with federal law, including 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information;
 - (b) imported to the United States in violation of 26 U.S.C. 5754;
 - (c) the licensee knows or has reason to know were not manufactured for sale, distribution, or use in the United States;
 - (d) for which a list of added ingredients has not been submitted to the federal Department of Health and Human Services pursuant to 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act; or
 - (e) known by the licensee to be otherwise in violation of other related federal law.
- (2) A person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-22-203(3)(c).
- (3) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.

Amended by Chapter 52, 2002 General Session

59-14-211 Penalties for dealing with prohibited cigarettes -- Private right of action.

- (1) A person, regardless of whether the person is a licensee under Section 59-14-202, is guilty of a class B misdemeanor for each instance in which the person knowingly or with reason to know:
 - (a) sells or distributes cigarettes described under Section 59-14-210;
 - (b) acquires, holds, owns, possesses, transports, imports, or causes to be imported cigarettes:
 - (i) described under Section 59-14-210; and
 - (ii) intended for distribution or sale in the state;

- (c) alters the package of any cigarettes prior to their sale or distribution to the ultimate consumer to remove, conceal, or obscure a notice, warning label, or other package information described in Subsection 59-14-210(1)(a); or
- (d) affixes a stamp used to pay the tax imposed under Section 59-14-204, Part 3, Tobacco Products, or Part 4, Cigarettes and Tobacco Products, to a package or container of cigarettes:
 - (i) described under Section 59-14-210;
 - (ii) known by the person affixing the stamp to be altered as described under Subsection (1)(c); or
 - (iii) in violation of Section 59-14-604.
- (2) If a person knowingly or with reason to know commits an act described in Subsections (1)(a) through (d), the commission shall:
 - (a) suspend or revoke a license issued to the person under Section 59-14-202; and
 - (b) regardless of whether the person is licensed under Section 59-14-202, impose a civil penalty in an amount not to exceed the greater of:
 - (i) 500% of the retail value of the cigarettes; or
 - (ii) \$5,000.
- (3) Any person whose commercial interests have been adversely affected as a result of a violation of this section may bring an action for injunctive relief, damages, or both.
- (4)
 - (a) The sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or retailer is punishable by a court of law as follows:
 - (i) a first violation involving a total quantity of less than 100 cartons of cigarettes is punishable by a fine in an amount the greater of \$500 or five times the retail value of the cigarettes;
 - (ii) a subsequent violation involving a total quantity of less than 100 cartons of cigarettes is punishable by:
 - (A) the greater of a fine of \$2,000 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed one year; or
 - (C) both imprisonment and a fine imposed by this Subsection (4)(a)(ii); and
 - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to two years;
 - (iii) a first violation involving a total quantity of 100 cartons of cigarettes or more is punishable by:
 - (A) the greater of a fine of \$2,500 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed five years; or
 - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iii);
 - (iv) a second violation involving a quantity of 100 cartons of cigarettes or more is punishable by:
 - (A) the greater of a fine of \$10,000 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed five years; or
 - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iv); and
 - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to five years; and
 - (v) a third and subsequent violation involving a quantity of 100 cartons of cigarettes or more is punishable by:
 - (A) the greater of a fine of \$25,000 or five times the retail value of the cigarettes;
 - (B) imprisonment not to exceed five years; or
 - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(v); and

- (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to five years; and
- (b) any counterfeit cigarette seized by the commission shall be destroyed.

Amended by Chapter 204, 2005 General Session

59-14-212 Reporting of imported cigarettes -- Penalty.

- (1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States shall provide to the commission the following as they pertain to the imported cigarettes:
 - (a) a copy of the importer's federal import permit;
 - (b) the customs form showing the tax information required by federal law;
 - (c) a statement signed under penalty of perjury by the manufacturer or importer that the manufacturer or importer has complied with:
 - (i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information; and
 - (ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding reporting of added ingredients;
 - (d) the name of the person from whom the person affixing the stamp received the cigarettes;
 - (e) the name of the person to whom the person affixing the stamp delivered the cigarettes, unless the person receiving the cigarettes was the ultimate consumer;
 - (f) the quantity of cigarettes in the package or container; and
 - (g) the brand and brand style of the cigarettes.
- (2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.
- (3) The information under Subsection (1) shall be provided on a quarterly basis on forms specified by the agency.
- (4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):
 - (a) is guilty of a class B misdemeanor; and
 - (b) may be subject to:
 - (i) revocation or suspension of a license issued under Section 59-14-202; and
 - (ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which a report was not properly made; or
 - (B) \$5,000.
- (5) The information under Subsection (1) may be disclosed by the commission as provided under Subsection 59-1-403(3)(g).

Amended by Chapter 322, 2007 General Session

59-14-213 Contraband goods.

- (1) Any cigarettes in violation of the requirements of this chapter or of any state or federal law, including Sections 59-14-203, 59-14-205, 59-14-209, 59-14-211, Subsection 59-14-212(1), or Section 59-14-214 are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.

- (2) Any goods seized pursuant to Subsection (1) shall be delivered to the commission and destroyed.
- (3) Any cigarettes, as defined in Subsection 59-22-202(4), in violation of Section 59-14-604 are contraband goods and may be seized in accordance with Subsections (1) and (2).

Amended by Chapter 204, 2005 General Session

59-14-214 Nonparticipating manufacturer equity assessment.

- (1) As used in this section, "nonparticipating manufacturer" means a tobacco product manufacturer, as defined in Section 59-22-202, that is not a participating manufacturer within the meaning of Subsection II(jj) of the Master Settlement Agreement, as defined in Section 59-22-202.
- (2)
 - (a) There is levied an equity assessment, at the rate of 1.75 cents on each cigarette, for all cigarette packages of nonparticipating manufacturers to which a stamp is affixed as required under Section 59-14-205.
 - (b) The equity assessment imposed by this section is in addition to all other assessments, fees, and taxes levied under existing law.
 - (c) The equity assessment imposed by this section shall be paid by affixing a stamp in the manner and at the time described in Section 59-14-205.
 - (d) Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied by Section 59-14-204.
- (3) The purposes of this equity assessment are:
 - (a) to recover health care costs to the state imposed by nonparticipating manufacturers;
 - (b) to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers;
 - (c) to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement, as defined in Section 59-22-202;
 - (d) to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and
 - (e) to fund enforcement and administration of:
 - (i) Chapter 14, Part 6, Tobacco Manufacturer Stamping Enforcement Provisions;
 - (ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers; and
 - (iii) the equity assessment imposed by this section.
- (4) Each manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to a package of cigarettes, shall report quarterly to the commission for each place of business, the number and denominations of stamps affixed to individual packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor, wholesaler, or retail dealer in the preceding quarter, including the manufacturer and brand family.
- (5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:
 - (a) is guilty of a class B misdemeanor; and
 - (b) is subject to:
 - (i) revocation or suspension of a license under Part 2, Cigarettes; and

- (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or
 - (B) \$5,000.

Amended by Chapter 148, 2013 General Session

59-14-215 Transitional inventory tax on cigarettes -- Penalties and interest for failure to comply -- Credit or refund for outdated, unaffixed stamps.

- (1) In addition to the tax described in Section 59-14-204, there is imposed, beginning on July 1, 2010, an inventory tax on all cigarettes subject to the tax described in Section 59-14-204, upon the sale, use, storage, or distribution of those cigarettes in the state, as follows:
 - (a) the tax imposed in this section applies only to cigarettes sold, used, stored, or distributed in the state on or after July 1, 2010:
 - (i) that have a stamp that reflects that the tax paid on those cigarettes was paid at the tax rate imposed under Section 59-14-204 that was applicable on June 30, 2010; and
 - (ii) for which the tax imposed in this section has not been paid; and
 - (b) the tax imposed in this section is equal to the difference between:
 - (i) the tax imposed on those cigarettes under Section 59-14-204, beginning on July 1, 2010; and
 - (ii) the tax imposed on those cigarettes under Section 59-14-204 on or before June 30, 2010.
- (2) Except as otherwise provided under this chapter, the tax imposed under this section shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler, or retailer.
- (3) A person described in Subsection (2) shall remit the tax imposed in this section, on a return prescribed by the commission, on or before July 31, 2010.
- (4) Failure of a person to comply with the requirements of this section subjects the person to the penalties and interest described in Sections 59-1-401 and 59-1-402.
- (5) The commission may not waive the interest or penalties imposed on a person for failure to comply with the requirements of this section.
- (6)
 - (a) Beginning on July 1, 2010, it is unlawful to affix a stamp to cigarettes that reflects payment of the tax imposed under Section 59-14-204 at the rate that was applicable on or before June 30, 2010.
 - (b) A person who violates Subsection (6)(a) may be required by the commission to pay as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of \$25 for each offense, to be assessed and collected by the commission in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
 - (c) A person who, on or after July 1, 2010, possesses tax stamps described in Subsection (6)(a) may return the stamps to the commission for a credit or refund.

Amended by Chapter 407, 2010 General Session, (Coordination Clause)
Enacted by Chapter 415, 2010 General Session

**Part 3
Tobacco Products**

59-14-301 Registration and licensing -- Fee -- Bond exceptions.

- (1) All manufacturers and distributors of all tobacco products, as defined in Section 59-14-102, who are responsible for the collection of tax on tobacco products under this chapter, and all retailers of all tobacco products:
 - (a) shall register with the commission;
 - (b) shall be licensed by the commission under Part 2, Cigarettes; and
 - (c) are subject to the requirements, procedures, and penalties described in Part 2, Cigarettes.
- (2) A fee may not be charged for registration and licensing of manufacturers, jobbers, distributors, or retailers of tobacco products in addition to the cigarette license if such a license is required.
- (3) The commission shall require any manufacturer, wholesaler, retailer, or any other person subject to this section, and who is responsible for the collection of tax on tobacco products under this chapter, to post a bond as a prerequisite to registering. The bond shall be in a form and an amount determined by the commission. If the bond is required under Section 59-14-201, the bond may be a combination, the minimum amount of which shall be \$1,000.

Amended by Chapter 96, 2011 General Session

59-14-301.5 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 tobacco products to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's order or order of default, finding 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 order or order of default finding 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 59-14-301 to sell tobacco 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 revocation becomes final.

Amended by Chapter 96, 2011 General Session

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 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 rate 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).

Amended by Chapter 189, 2014 General Session

59-14-303 Remittance of tax -- Returns -- Invoice required -- Filing requirements -- Reports -- Exceptions -- Penalties -- Overpayments.

- (1) The taxes imposed on all tobacco products shall be remitted to the commission together with quarterly returns as prescribed by the commission. These returns shall be due and payable to the commission quarterly on or before the last day of the month following each calendar quarterly period.
- (2) Every manufacturer, wholesaler, retailer, or any other person selling tobacco products to persons other than ultimate consumers shall furnish with each sale an itemized invoice showing the seller's name and address, the name and address of the purchaser, the date of sale, the name and price of the product, and the discount, if any. A notation should be made that the price includes or does not include the tax. Copies of this invoice shall be retained by the seller and the purchaser and shall be available for inspection by the commission or its agent for a period of three years following the sale.
- (3)
 - (a) A consumer who purchases untaxed products subject to the tax imposed by this part for use or other consumption, shall file with the commission, on forms prescribed by the commission, a statement showing the quantity and description of the products and pay the tax imposed by this part on those products.
 - (b) The statement described in Subsection (3)(a) shall be filed and the tax paid on or before the last day of the month immediately following the month during which the tobacco products were purchased.
 - (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 the return required by this part was filed.
- (4) No report is required from tourists who import any products taxed by this part if the products are for their 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.

Amended by Chapter 6, 2007 General Session

59-14-304 Transitional inventory tax on tobacco products -- Penalties and interest for failure to comply.

- (1) In addition to the tax described in Section 59-14-302, there is imposed, beginning on July 1, 2010, an inventory tax on all tobacco products subject to the tax described in Section 59-14-302, upon the sale, use, or storage of those tobacco products in the state, as follows:
 - (a) the tax imposed in this section applies only to tobacco products sold, used, or stored in the state on or after July 1, 2010:
 - (i) for which the tax was paid at the tax rate imposed under Section 59-14-302 that was applicable on June 30, 2010; and
 - (ii) for which the tax imposed in this section has not been paid; and
 - (b) the tax imposed in this section is equal to the difference between:
 - (i) the tax imposed on those tobacco products under Section 59-14-302, beginning on July 1, 2010; and

- (ii) the tax imposed on those tobacco products under Section 59-14-302 on or before June 30, 2010.
- (2) The tax imposed in this section shall be paid by the manufacturer, jobber, distributor, wholesaler, or retailer.
- (3) A person described in Subsection (2) shall remit the tax imposed in this section, in a return prescribed by the commission, on or before July 31, 2010.
- (4) Failure of a person to comply with the requirements of this section subjects the person to the penalties and interest described in Sections 59-1-401 and 59-1-402.
- (5) The commission may not waive the interest or penalties imposed on a person for failure to comply with the requirements of this section.

Amended by Chapter 407, 2010 General Session, (Coordination Clause)
Enacted by Chapter 415, 2010 General Session

59-14-305 Credit or refund for cigarette rolling machine operator.

- (1) A cigarette rolling machine operator may claim a credit or refund on a return filed under Section 59-14-303 as provided in this section if:
 - (a) a person pays a tax under this chapter on tobacco that the person sells or provides to the cigarette rolling machine operator; and
 - (b) the cigarette rolling machine operator pays a tax under Section 59-14-302 on the tobacco that the cigarette rolling machine operator:
 - (i) purchases or is provided with under Subsection (1)(a); and
 - (ii) uses to produce a cigarette from the cigarette rolling machine.
- (2) The credit under this section is the lesser of:
 - (a) the tax paid under Subsection (1)(a); or
 - (b) the tax paid under Subsection (1)(b).
- (3) A cigarette rolling machine operator that claims a credit or refund under this section shall:
 - (a) keep in a form prescribed by the commission books and records that are necessary to establish the tax paid under Subsection (1)(a) and the tax paid under Subsection (1)(b) for purposes of calculating the credit or refund the cigarette rolling machine operator may claim;
 - (b) keep the books and records described in Subsection (3)(a) for the time period during which an assessment may be made under Section 59-1-1408; and
 - (c) open the books and records for examination at any time by:
 - (i) the commission; or
 - (ii) an agent or representative the commission designates.

Enacted by Chapter 148, 2013 General Session

Part 4
Cigarettes and Tobacco Products

59-14-401 Refund of taxes paid -- Exemption for exported cigarettes and tobacco products.

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

- (i) is a licensed dealer;
 - (ii) signs an affidavit that the cigarette or tobacco product was so sold and shipped;
 - (iii) furnishes from the purchaser a written acknowledgment that the purchaser has received:
 - (A) the cigarette or tobacco product; and
 - (B) the amount of any stamps for which a refund is requested;
 - (iv) reports the name and address of the purchaser; and
 - (v) reports the name of the manufacturer of the cigarette, as defined under Section 59-22-202, reported under Section 59-14-407 if the cigarette is manufactured by a manufacturer required to place funds into escrow under Section 59-22-203.
- (b) The taxes shall be refunded in the manner provided in Subsection 59-14-206(2) for unused stamps.
- (2) Wholesalers or distributors in this state who export taxable cigarettes and tobacco products to a regular dealer in another state shall be exempt from the payment of any tax upon the sale of the articles upon furnishing such proof of the sale and exportation as the commission may require.

Amended by Chapter 229, 2000 General Session

59-14-402 Reports of imports and exports of taxable cigarettes and tobacco products.

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

Renumbered and Amended by Chapter 2, 1987 General Session

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

All persons dealing in taxable cigarettes or tobacco products, who purchase or receive these commodities from outside the state, whether the product is delivered through a wholesaler or distributor in this state, or by drop shipment or otherwise, shall mail or deliver a duplicate invoice of all those purchases or receipts to the commission within 10 days after receipt of the commodities if requested by the commission. Failure to furnish duplicate invoices or receipts as requested is subject to the penalties provided under Section 59-1-401.

Renumbered and Amended by Chapter 2, 1987 General Session

Renumbered and Amended by Chapter 3, 1987 General Session

59-14-404 Administration of chapter by commission.

- The commission shall administer and enforce the taxes imposed by this chapter and may:
- (1) enter upon the premises of any taxpayer and examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the taxes; and
 - (2) secure any other information directly or indirectly concerned in the enforcement of this chapter.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-406 Assistance for commission.

The commission may call to its aid the attorney general, any city, county, or district attorney, or any peace officer to enforce any tax laws which it administers.

Amended by Chapter 38, 1993 General Session

59-14-407 Reporting of manufacturer name.

- (1) As used in this section:
 - (a) "Cigarette" has the same meaning as defined in Section 59-22-202.
 - (b) "Tobacco product manufacturer" has the same meaning as defined in Section 59-22-202.
- (2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report quarterly to the commission:
 - (a) the quantity of cigarettes in the package or container; and
 - (b) the name of the manufacturer of the cigarettes.
- (3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette under Section 59-22-202 and manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report quarterly to the commission:
 - (a) the quantity of cigarettes upon which the tax is levied; and
 - (b) the name of the manufacturer of each cigarette.
- (4) The reports under Subsections (2) and (3) shall be made no later than quarterly on or before the last day of the month following each calendar quarterly period pursuant to rules established by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:
 - (a) is guilty of a class B misdemeanor; and
 - (b) is subject to:
 - (i) revocation or suspension of a license under Part 2, Cigarettes, and Part 3, Tobacco Products; and
 - (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:
 - (A) 500% of the retail value of the cigarettes and tobacco products for which an accurate report was not filed; or
 - (B) \$5,000.

Amended by Chapter 164, 2011 General Session

59-14-409 Definitions -- Credit or refund for tax paid on cigarette or tobacco product that is destroyed or returned to the manufacturer -- Interest -- Rulemaking authority.

- (1) As used in this section, "licensed person" means a person:
 - (a) licensed by the commission in accordance with Section 59-14-202; and
 - (b) that is a:
 - (i) distributor;
 - (ii) jobber;

- (iii) manufacturer;
 - (iv) retailer;
 - (v) wholesaler; or
 - (vi) a person similar to a person described in Subsections (1)(b)(i) through (v) as determined by the commission by rule.
- (2) A licensed person may apply to the commission for a credit or refund as provided in Subsection (3) if:
- (a) on or after July 1, 2005, the following are removed from retail sale or from storage:
 - (i) a cigarette; or
 - (ii) a tobacco product;
 - (b) before a cigarette or tobacco product is removed from retail sale or from storage in accordance with Subsection (2)(a), the licensed person remits a tax:
 - (i) to the commission;
 - (ii) on the:
 - (A) cigarette; or
 - (B) tobacco product; and
 - (iii) in accordance with:
 - (A) Part 2, Cigarettes; or
 - (B) Part 3, Tobacco Products; and
 - (c) the licensed person verifies to the commission that the cigarette or tobacco product described in Subsection (2)(a) has been:
 - (i) returned to the manufacturer of the cigarette or tobacco product; or
 - (ii) destroyed.
- (3) The amount of the credit or refund described in Subsection (2) is equal to:
- (a) for a cigarette removed from retail sale or from storage, the amount of tax the licensed person paid on the cigarette in accordance with Part 2, Cigarettes; or
 - (b) for a tobacco product removed from retail sale or from storage, the amount of tax the licensed person paid on the tobacco product in accordance with Part 3, Tobacco Products.
- (4)
- (a) The commission shall grant a credit or refund under this section if the commission determines that a licensed person meets the requirements of Subsection (2).
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules establishing procedures and requirements for a licensed person to verify to the commission that a cigarette or tobacco product described in Subsection (2)(a) has been:
 - (i) returned to the manufacturer of the cigarette or tobacco product; or
 - (ii) destroyed.
- (5)
- (a) If the commission makes a credit or refund under this section within a 90-day period after the day on which a licensed person submits an application to the commission for the credit or refund, interest may not be added to the amount of credit or refund.
 - (b) If the commission makes a credit or refund under this section more than 90 days after the day on which a licensed person submits an application to the commission for the credit or refund, interest shall be added to the amount of credit or refund as provided in Section 59-1-402.
- (6)
- (a) The commission may create a form for:
 - (i) a licensed person to:
 - (A) submit a claim for a credit or refund; or

- (B) verify to the commission that a cigarette or tobacco product has been:
 - (I) returned to the manufacturer of the cigarette or tobacco product; or
 - (II) destroyed; or
- (ii) processing a claim for a credit or refund for payment.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining a person similar to a person described in Subsections (1)(b)(i) through (v).

Amended by Chapter 382, 2008 General Session

59-14-410 Action for collection of tax -- Action for refund or credit of tax.

- (1)
 - (a) Except as provided in Subsections (2) through (5), the commission shall assess a tax under this chapter within three years after a taxpayer files a return.
 - (b) Except as provided in Subsections (2) through (5), if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax.
- (2) The commission may assess a tax at any time if a taxpayer:
 - (a) files a false or fraudulent return with intent to evade; or
 - (b) does not file a return.
- (3) The commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:
 - (a) the three-year period under Subsection (1) has not expired; and
 - (b) the commission and the taxpayer sign a written agreement:
 - (i) authorizing the extension; and
 - (ii) providing for the length of the extension.
- (4) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (5) if:
 - (a) the taxpayer subsequently refuses to agree to an extension request by the commission; and
 - (b) the three-year period under Subsection (1) expires before the commission completes the audit.
- (5) An assessment under Subsection (4) shall be:
 - (a) for the time period for which the commission could not make an assessment because of the expiration of the three-year period; and
 - (b) in an amount equal to the difference between:
 - (i) the commission's estimate of the amount of tax the taxpayer would have been assessed for the time period described in Subsection (5)(a); and
 - (ii) the amount of tax the taxpayer actually paid for the time period described in Subsection (5)(a).
- (6)
 - (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date of overpayment.
 - (b) The commission shall extend the period for a taxpayer to file a claim under Subsection (6)(a) if:
 - (i) the three-year period under Subsection (6)(a) has not expired; and
 - (ii) the commission and the taxpayer sign a written agreement:
 - (A) authorizing the extension; and

(B) providing for the length of the extension.

Enacted by Chapter 6, 2007 General Session

Part 5 Smokeless Tobacco Products

59-14-501 Warning labels required.

- (1) All smokeless tobacco products sold within the state shall be affixed with an adhesive warning label which states: "Use of this product may cause oral cancer and other mouth disorders and is addictive." As used in this part, "smokeless tobacco products" means chewing tobacco and snuff.
- (2) The distributor, wholesaler, or manufacturer of smokeless tobacco products shall provide and pay for warning labels in accordance with specifications adopted by the Department of Health.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-502 Requirements for placement of warning labels.

Warning labels shall be securely affixed to each individual package of smokeless tobacco products within 72 hours after receipt of the products by any wholesaler, distributor, or retailer within this state. All smokeless tobacco products shall be affixed with warning labels before sale within the state. If any smokeless tobacco products are manufactured within the state, they shall be affixed with warning labels by the manufacturer when sold.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-503 Authority of commission.

The commission may adopt rules which permit smokeless tobacco products without affixed warning labels to remain in the hands of a wholesaler or distributor until the original case or crate is broken, unpacked, or sold. The commission may permit a manufacturer, wholesaler, or distributor to sell and export smokeless tobacco products to a regular dealer in smokeless tobacco products outside the state, without affixing the warning labels required by Section 59-14-501.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-504 Responsibility for placement of warning labels -- One label required.

It is the intent and purpose of this part to require all manufacturers, jobbers, wholesalers, and distributors to securely affix the warning labels required by Section 59-14-501. When warning labels are affixed as required by this part, no additional warning label is required, regardless of how often the articles are sold or resold in the state.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-505 Separate offenses -- Evidence of intended sale of products.

Each article, package, or container not having a warning label affixed, as required by Section 59-14-501, is considered a separate offense. The presence of any article, package, or container of

smokeless tobacco products in the place of business of any person required by this chapter to affix warning labels is prima facie evidence that those articles, packages, or containers are intended for sale and are subject to this part.

Amended by Chapter 4, 1993 General Session

59-14-506 Contraband goods.

Any smokeless tobacco products without affixed warning labels as required by this part, which have been in the possession of any wholesaler, distributor, or retailer in this state for 72 hours or longer, or which have been sold by the wholesaler, distributor, or retailer, are contraband goods. Those contraband goods may be seized by the commission or its employees, or by any peace officer of the state or its political subdivisions, without a warrant. The contraband goods shall be destroyed.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-507 Penalty for violation.

Violation of this part is a class B misdemeanor.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-508 Federal laws to supersede these requirements.

In the event federal legislation requiring warning labels on smokeless tobacco products is enacted, the requirements of that legislation shall supersede the requirements of Sections 59-14-501 through 59-14-507.

Renumbered and Amended by Chapter 2, 1987 General Session

59-14-509 Restrictions on mail order or Internet sales.

(1) For purposes of this section:

- (a) "Distributor" means a person, wherever residing or located, who:
 - (i) is licensed in this state to purchase non-taxed tobacco products; and
 - (ii) stores, sells, or otherwise disposes of tobacco products.
- (b) "Licensed person" is as defined in Subsection 59-14-409(1).
- (c) "Order or purchase" includes:
 - (i) by mail or delivery service;
 - (ii) through the Internet or computer network;
 - (iii) by telephone; or
 - (iv) through some other electronic method.
- (d) "Retailer" means any person who sells tobacco products to consumers for personal consumption.

(2) A person, distributor, manufacturer, or retailer shall not:

- (a) cause tobacco products or cigarettes as defined in Section 59-22-202 to be ordered or purchased by anyone other than a licensed person; or
- (b) knowingly provide substantial assistance to a person who violates this section.

(3)

- (a) Each order or purchase of a tobacco product or cigarettes as defined in Section 59-22-202 in violation of Subsection (2) shall constitute a separate violation under this section.

- (b) In addition to the penalties in Subsection (4), a person who violates this section is subject to:
 - (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;
 - (ii) an injunction to restrain a threatened or actual violation of this section; and
 - (iii) recovery by the state for:
 - (A) the costs of investigation;
 - (B) the cost of expert witness fees;
 - (C) the cost of the action; and
 - (D) reasonable attorney's fees.
- (4) A person who knowingly violates this section has engaged in an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the General Fund.

Enacted by Chapter 341, 2009 General Session

Part 6

Tobacco Manufacturer Stamping Enforcement Provisions

59-14-601 Definitions.

As used in this part:

- (1) "Brand family" means:
 - (a) all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including: "menthol," "lights," "kings," and "100s"; and
 - (b) any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- (2) "Cigarette" has the same meaning as in Subsection 59-22-202(4).
- (3) "Commission" means the State Tax Commission as defined in Section 59-1-101.
- (4) "Distributor" means a person, wherever residing or located, who purchases nontax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.
- (5) "Master Settlement Agreement" has the same meaning as in Subsection 59-22-202(5).
- (6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.
- (7) "Participating manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.
- (8) "Stamping agent" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under Section 59-14-205 or any person that is required to pay the tobacco tax imposed pursuant to Section 59-14-302.
- (9) "Qualified Escrow Fund" has the same meaning as defined in Subsection 59-22-202(6).
- (10)
 - (a) Except as provided in Subsection (10)(b), "tobacco product manufacturer" has the same meaning as defined in Subsection 59-22-202(9).
 - (b) "Tobacco product manufacturer" does not include a cigarette rolling machine operator as defined in Section 59-14-102.
- (11) "Units sold" has the same meaning as defined in Subsection 59-22-202(10).

Amended by Chapter 148, 2013 General Session

59-14-602 Certifications -- Directories -- Tax stamps.

- (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the commission a certification to the attorney general and the commission, no later than April 30th each year, certifying that, as of the date of the certification, the tobacco product manufacturer is either:
 - (a) a participating manufacturer; or
 - (b) in full compliance with Sections 59-14-214 and 59-22-203.
- (2) A participating manufacturer shall:
 - (a) include in its certification a list of its brand families; and
 - (b) update the list 30 calendar days prior to any addition to, or modification of, its brand families by executing and delivering a supplemental certification to the commission and the attorney general.
- (3)
 - (a) A nonparticipating manufacturer shall include in its certification:
 - (i) a list of all of its brand families and the number of units for each brand family that were sold in the state during the preceding calendar year;
 - (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year;
 - (iii) indicating, by an asterisk, any brand family sold in the state by the manufacturer during the preceding calendar year that is no longer being sold in the state by the manufacturer as of the date of the certification;
 - (iv) identifying by name and address, any other manufacturer of the brand families sold in the state, by the manufacturer submitting the certification, during the preceding or current calendar year;
 - (v) that the nonparticipating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process and provided notice of the registered agent as required by Section 59-14-605;
 - (vi) that the nonparticipating manufacturer has:
 - (A) established and continues to maintain a qualified escrow fund; and
 - (B) has executed a qualified escrow agreement which:
 - (I) has been reviewed and approved by the commission; and
 - (II) governs the qualified escrow fund;
 - (vii) that the nonparticipating manufacturer is in full compliance with the Model Tobacco Settlement Act and this part, and any regulations promulgated pursuant to the Model Tobacco Settlement Act or this part; and
 - (viii) the following information concerning the qualified escrow fund:
 - (A) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer established the qualified escrow fund required by Section 59-22-203;
 - (B) the account number of the qualified escrow fund and any subaccount number for the state;
 - (C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year;

- (D) the date and amount of each deposit into the fund, and evidence or verification as required by the commission by administrative rule adopted in accordance with Section 59-14-607 as necessary to confirm the information required by Subsection (3)(a); and
 - (E) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund, or from any other qualified escrow fund into which it ever made escrow payments pursuant to Section 59-22-203.
- (b) The nonparticipating manufacturer shall update the list required by this Subsection (3) at least 30 calendar days prior to any addition to, or modification of, its brand families, by executing and delivering a supplemental certification to the commission and the attorney general.
 - (c) A tobacco product manufacturer subject to this Subsection (3) shall:
 - (i) deposit the escrow payments required by Sections 59-14-214 and 59-22-203 on a quarterly basis during the year in which the sale occurred; and
 - (ii) verify the quarterly deposits to the commission in accordance with Subsection (3)(a)(viii)(D).
- (4) A tobacco product manufacturer may not include a brand family in the certification required by this section unless:
 - (a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family will be considered its cigarette for purposes of:
 - (i) calculating its payments under the Master Settlement Agreement for the relevant year; and
 - (ii) calculating the volume and shares determined pursuant to the Master Settlement Agreement; and
 - (b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family will be considered its cigarette for purposes of Section 59-22-203.
- (5) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of Section 59-22-203.
 - (6) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification required by this section for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

Enacted by Chapter 204, 2005 General Session

59-14-603 Directory of cigarettes approved for stamping and sale.

- (1) No later than August 30, 2005, the commission shall develop and publish on its website a directory listing:
 - (a) all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 59-14-602; and
 - (b) all brand families that are listed in the certifications required by Section 59-14-602, except the commission shall not include or retain in the directory:
 - (i) the name or brand families of any nonparticipating manufacturer:
 - (A) who failed to provide the certification required by Section 59-14-602; or
 - (B) whose certification is determined by the commission to be out of compliance with Section 59-14-602, unless the commission has determined that the violation has been cured to the satisfaction of the commission; or
 - (ii) a tobacco product manufacturer or brand family of a nonparticipating manufacturer for which the commission determines:

- (A) any escrow payment required by Section 59-22-203 for any period, for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement; or
 - (B) any outstanding final judgment, including interest thereon, for a violation of the Model Tobacco Settlement Act has not been fully satisfied for the brand family or the tobacco product manufacturer.
- (2) The commission shall update the directory required by this section as necessary:
- (a) to correct mistakes;
 - (b) to add or remove a tobacco product manufacturer or brand family; and
 - (c) to keep the directory in conformity with the requirements of this part.
- (3)
- (a) Every stamping agent shall provide to the commission a current and valid electronic mail address for the purpose of receiving notifications from the commission concerning information required by this section and this part.
 - (b) The stamping agent shall update the electronic mail address as necessary.
- (4) A determination by the commission to not include or to remove a brand family or tobacco product manufacturer from the directory required by this section is subject to review in the manner prescribed by Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

59-14-604 Prohibition against stamping, sale, or import of cigarettes not in the directory -- Requirement to certify compliance.

- (1) It is unlawful for any person:
- (a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory required by Section 59-14-603; or
 - (b) to sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory required by Section 59-14-603.
- (2)
- (a) It is unlawful for any person to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of Section 59-14-603.
 - (b) A violation of this Subsection (2) is a class B misdemeanor.

Enacted by Chapter 204, 2005 General Session

59-14-605 Appointment of agent for service of process.

- (1)
- (a) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory required by Section 59-14-603, appoint and continually engage without interruption the services of an agent in this state.
 - (b) The agent appointed under Subsection (1)(a) shall:
 - (i) act as agent for the service of process for any action or proceeding against the nonresident or foreign nonparticipating manufacturer concerning or arising out of the enforcement of this part or the Model Tobacco Settlement Act; and
 - (ii) may be served in any manner authorized by law.

- (c) Service under this Subsection (1) shall constitute legal and valid service of process on the nonparticipating manufacturer.
- (2) The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent appointed pursuant to this section to the attorney general and to the commission as established by administrative rule in accordance with Section 59-14-607.
- (3)
 - (a) If the nonparticipating manufacturer terminates the authority of an agent appointed under the provisions of this section, the nonparticipating manufacturer shall:
 - (i) provide notice to the attorney general and to the commission 30 calendar days prior to termination of the authority of an agent; and
 - (ii) provide proof to the satisfaction of the commission of the appointment of a new agent no less than five calendar days prior to the termination of the existing agent.
 - (b) If an agent terminates its agency appointment with the nonparticipating manufacturer, the nonparticipating manufacturer shall notify the attorney general and the commission of the termination within five calendar days of the manufacturer's knowledge of the termination, and shall include proof to the commission of the appointment of a new agent as required by commission rule adopted under Section 59-14-607.
- (4)
 - (a) If a nonparticipating manufacturer whose cigarettes are sold in this state does not appoint an agent as required by this section, the Department of Commerce shall serve as the agent for service of process.
 - (b) A nonparticipating manufacturer who does not appoint an agent as required by this section, and who has the Department of Commerce appointed as the agent for service of process under the provision of Subsection (4)(a), does not satisfy the condition precedent required by Subsection (1)(a), and may not be included in the directory created in Section 59-14-603.

Enacted by Chapter 204, 2005 General Session

59-14-606 Reporting by stamping agents.

- (1) A stamping agent shall submit the following information to the commission not later than 30 calendar days after the end of each calendar quarter, or more frequently if required by the commission by administrative rule in accordance with Section 59-14-607:
 - (a) a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the reporting period;
 - (b) the equivalent stick count for roll your own tobacco, for which the stamping agent paid the tobacco product tax during the reporting period;
 - (c) the equivalent total number of cigarettes or stick count for which the stamping agent paid taxes for the reporting period; and
 - (d) any other information the commission determines is necessary to enforce this part.
- (2) The stamping agent shall maintain, and make available to the commission, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the commission for a period of five years.
- (3) The commission may share information received under this part with federal, state, or local agencies as necessary for enforcement of this part, the Model Tobacco Settlement Act, or corresponding laws of other states.

- (4) For purposes of complying with the Model Tobacco Settlement Act, the commission may require, at any time, from the nonparticipating manufacturer and from the financial institution in which the manufacturer has established a qualified escrow fund, proof of:
 - (a) the amount of money in the fund, exclusive of interest;
 - (b) the amount and date of each deposit to the fund; and
 - (c) the amount and date of each withdrawal from the fund.
- (5) In addition to the information required to be submitted pursuant to Sections 59-14-214 and 59-22-203 and this part, the commission may require by administrative rule adopted pursuant to Section 59-14-607, a stamping agent or tobacco product manufacturer to submit any additional information including samples of the packaging or labeling of each brand family, as is necessary to enable the commission to determine whether a tobacco product manufacturer is in compliance with this part.
- (6) No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless the person has certified in writing, under penalty of perjury, that the person will comply fully with this part.
- (7) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:
 - (a) is guilty of a class B misdemeanor; and
 - (b) is subject to:
 - (i) revocation or suspension of a license under Part 2, Cigarettes; and
 - (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or
 - (B) \$5,000.

Amended by Chapter 164, 2011 General Session

59-14-607 Administrative rulemaking authority.

- (1) The commission may promulgate administrative rules as necessary to enforce the provisions of this part.
- (2) The rules authorized by this part include rules:
 - (a) to verify information concerning the escrow deposits required by Section 59-14-602;
 - (b) regarding the production of information sufficient to enable the commission to determine the adequacy of the amount of the installment deposit required by this part;
 - (c) regarding the certification required by Section 59-14-602;
 - (d) necessary to receive and publish information for the directory required by Section 59-14-603;
 - (e) regarding the notification requirements for the appointment of an agent for service of process in Section 59-14-605;
 - (f) for reporting by stamping agents or manufacturers of tobacco products under Section 59-14-606; and
 - (g) as authorized by this part or the Master Settlement Agreement.

Enacted by Chapter 204, 2005 General Session

59-14-608 License revocation and penalties.

- (1)
 - (a) The commission may revoke or suspend the license of a stamping agent in the manner provided in Section 59-14-202 if the commission determines that the stamping agent has

violated Sections 59-14-604, 59-14-606, or other rule adopted under the provisions of this part.

- (b) The penalty imposed under Subsection (1)(a) is in addition to or in lieu of any other civil or criminal remedy provided by law.
 - (c) Each stamp affixed and each sale or offer to sell cigarettes in violation of Section 59-14-604, or other rule adopted under the provisions of this part, shall constitute a separate violation.
 - (d) For each violation under Subsection (1)(c), the commissioner may, in addition to the penalty imposed by Subsection (1)(a), impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000.
- (2)
- (a) Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, or imported for personal consumption in this state, in violation of Section 59-14-604 are:
 - (i) contraband under Section 59-14-213; and
 - (ii) subject to seizure and forfeiture as provided in Section 59-14-213.
 - (b) Cigarettes seized and forfeited under the provisions of this section shall be destroyed and not resold.
- (3)
- (a) The commission may seek an injunction to:
 - (i) restrain a threatened or actual violation of this part by a stamping agent; or
 - (ii) to compel the stamping agent to comply with this part.
 - (b) In any action brought pursuant to this section, the state is entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.
- (4) A person who violates Section 59-14-604 engages in an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act.

Enacted by Chapter 204, 2005 General Session

59-14-609 Effective dates for reporting -- Disgorgement of profits -- Recovery of costs.

- (1) The first report of the stamping agents required by this part are due by June 15, 2005. The first certifications of the tobacco product manufacturers required by this part are due June 30, 2005. The directory required by this part shall be published by the commission no later than August 30, 2005.
 - (2) In any action brought by the state to enforce this part, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.
- (3)
- (a) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the State Treasurer for deposit in the Tobacco Control Restricted Account which is created in Section 59-14-610.
 - (b) Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Enacted by Chapter 204, 2005 General Session

59-14-610 Creation of Tobacco Control Restricted Account.

- (1) There is created within the General Fund a restricted account known as the Tobacco Control Restricted Account.

- (2) The Tobacco Control Restricted Account consists of:
 - (a) all profits, gains, gross receipts, or other benefits ordered to be disgorged by the court under the provisions of Subsection 59-14-609(3); and
 - (b) interest on account money.
- (3) Upon appropriations by the Legislature, money from the account shall be used for the enforcement of this part and the Master Settlement Agreement.

Enacted by Chapter 204, 2005 General Session

59-14-611 Severability clause.

If a court of competent jurisdiction finds that the provisions of this part and of the Model Tobacco Settlement Act conflict and cannot be harmonized, then the provisions of the Model Tobacco Settlement Act shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part causes the Model Tobacco Settlement Act to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this part shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this part.

Enacted by Chapter 204, 2005 General Session

Part 7
Cigarette Rolling Machine Operators Act

59-14-701 Title.

This part is known as the "Cigarette Rolling Machine Operators Act."

Enacted by Chapter 148, 2013 General Session

59-14-702 Definitions.

As used in this part:

- (1) "Brand family" is as defined in Section 59-14-601.
- (2) "Tobacco product manufacturer" is as defined in Section 59-14-601.

Enacted by Chapter 148, 2013 General Session

59-14-703 Certification of cigarette rolling machine operators -- Renewal of certification -- Requirements for certification or renewal of certification -- Denial.

- (1) A cigarette rolling machine operator may not perform the following without first obtaining certification from the commission as provided in this part:
 - (a) locate a cigarette rolling machine within this state;
 - (b) make or offer to make a cigarette rolling machine available for use within this state; or
 - (c) offer a cigarette for sale within this state if the cigarette is produced by:
 - (i) the cigarette rolling machine operator; or
 - (ii) another person at the location of the cigarette rolling machine operator's cigarette rolling machine.

- (2) A cigarette rolling machine operator shall renew its certification as provided in this section.
- (3) The commission shall prescribe a form for certifying a cigarette rolling machine operator under this part.
- (4)
 - (a) A cigarette rolling machine operator shall apply to the commission for certification before the cigarette rolling machine operator performs an act described in Subsection (1) within the state for the first time.
 - (b) A cigarette rolling machine operator shall apply to the commission for a renewal of certification on or before the earlier of:
 - (i) December 31 of each year; or
 - (ii) the day on which there is a change in any of the information the cigarette rolling machine operator provides on the form described in Subsection (3).
- (5) To obtain certification or renewal of certification under this section from the commission, a cigarette rolling machine operator shall:
 - (a) identify:
 - (i) the cigarette rolling machine operator's name and address;
 - (ii) the location, make, and brand of the cigarette rolling machine operator's cigarette rolling machine; and
 - (iii) each person from whom the cigarette rolling machine operator will purchase or be provided tobacco products that the cigarette rolling machine operator will use to produce cigarettes; and
 - (b) certify, under penalty of perjury, that:
 - (i) the tobacco to be used in the cigarette rolling machine operator's cigarette rolling machine, regardless of the tobacco's label or description, shall be only of a:
 - (A) brand family listed on the commission's directory listing required by Section 59-14-603; and
 - (B) tobacco product manufacturer listed on the commission's directory listing required by Section 59-14-603;
 - (ii) the cigarette rolling machine operator shall prohibit another person who uses the cigarette rolling machine operator's cigarette rolling machine from using tobacco, a wrapper, or a cover except for tobacco, a wrapper, or a cover purchased by or provided to the cigarette rolling machine operator from a person identified in accordance with Subsection (5)(a)(iii);
 - (iii) the cigarette rolling machine operator holds a current license issued in accordance with this chapter;
 - (iv) the cigarettes produced from the cigarette rolling machine shall comply with Title 53, Chapter 7, Part 4, The Reduced Cigarette Ignition Propensity and Firefighter Protection Act;
 - (v) the cigarette rolling machine shall be located in a separate and defined area where the cigarette rolling machine operator ensures that a person younger than 19 years of age may not be:
 - (A) present at any time; or
 - (B) permitted to enter at any time; and
 - (vi) the cigarette rolling machine operator may not barter, distribute, exchange, offer, or sell cigarettes produced from a cigarette rolling machine in a quantity of less than 20 cigarettes per retail transaction.
- (6) If the commission determines that a cigarette rolling machine operator meets the requirements for certification or renewal of certification under this section, the commission shall grant the certification or renewal of certification.

- (7) If the commission determines that a cigarette rolling machine operator does not meet the requirements for certification or renewal of certification under this section, the commission shall:
- (a) deny the certification or renewal of certification; and
 - (b) provide the cigarette rolling machine operator the grounds for denial of the certification or renewal of certification in writing.

Enacted by Chapter 148, 2013 General Session

59-14-704 Cigarette rolling machine operator quarterly report to commission.

- (1) A cigarette rolling machine operator shall each quarter report to the commission:
- (a) the number of cigarettes, by weight, produced from each of the cigarette rolling machine operator's cigarette rolling machines for the previous calendar quarter;
 - (b) the brand family and the tobacco product manufacturer of the brand family of the tobacco the cigarette rolling machine operator purchased or was provided for use by the cigarette rolling machine operator's cigarette rolling machine for the previous calendar quarter;
 - (c) the ounces of tobacco the cigarette rolling machine operator purchased or was provided for use by the cigarette rolling machine operator's cigarette rolling machine for the previous calendar quarter; and
 - (d) each person from whom the cigarette rolling machine operator purchased or was provided tobacco for use by the cigarette rolling machine operator's cigarette rolling machine for the previous calendar quarter.
- (2) A cigarette rolling machine operator shall file the report required by this section on the last day of the month immediately following the last day of the previous calendar quarter.
- (3) The commission shall prescribe the form for the report under this section.

Enacted by Chapter 148, 2013 General Session

59-14-705 Cigarette rolling machine operator shall maintain a secure meter on cigarette rolling machine.

- (1) A cigarette rolling machine operator shall maintain a secure meter on each cigarette rolling machine that the cigarette rolling machine operator controls, leases, owns, possesses, or otherwise has available for use.
- (2) The secure meter described in Subsection (1):
- (a) shall maintain an accurate count of the cigarettes, by weight, dispensed by the cigarette rolling machine;
 - (b) may not be accessed except to take a reading of the secure meter; and
 - (c) may not be reset or otherwise altered.

Enacted by Chapter 148, 2013 General Session

59-14-706 Revocation of certification -- Denial of certification or revocation of certification appeal procedures -- Removal of cigarette rolling machine from premises.

- (1) In addition to the penalties provided under this title, the commission shall revoke the certification of a cigarette rolling machine operator if the cigarette rolling machine operator violates this part.
- (2) The following are subject to review in accordance with Title 63G, Chapter 4, Administrative Procedures Act:

- (a) the commission's denial of certification or denial of renewal of certification under Section 59-14-703; or
 - (b) the commission's revocation of certification under this section.
- (3) If the commission revokes the certification of a cigarette rolling machine operator:
- (a) the commission shall send written notice of the revocation to the cigarette rolling machine operator; and
 - (b) the cigarette rolling machine operator:
 - (i) may not use the cigarette rolling machine or make or offer to make the cigarette rolling machine available for use; and
 - (ii) no later than 10 days after the date the commission sends the written notice described in Subsection (3)(a), shall remove the cigarette rolling machine from the cigarette rolling machine operator's premises.

Enacted by Chapter 148, 2013 General Session

59-14-707 Commission rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to verify information for purposes of granting or denying a certification or renewal of certification under this part.

Enacted by Chapter 148, 2013 General Session

Part 8 Electronic Cigarette Licensing Act

59-14-801 Title.

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

Enacted by Chapter 132, 2015 General Session

59-14-802 Definitions.

As used in this part:

- (1) "Cigarette" means the same as that term is defined in Section 59-14-102.
- (2)
 - (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 (2)(a)(i); or
 - (iii) an accessory sold in the same package as the device described in Subsection (2)(a)(i).
 - (b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.
- (3) "Electronic cigarette product" means an electronic cigarette or an electronic cigarette substance.
- (4) "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.
- (5) "Enforcing agency" means the Department of Health, a county health department, or a local health department, when enforcing:

- (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or
- (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.
- (6) "Licensee" means a person that holds a valid license to sell electronic cigarette products.
- (7) "License to sell an electronic cigarette product" means a license issued by the commission under Subsection 59-14-803(3).

Enacted by Chapter 132, 2015 General Session

59-14-803 License to sell electronic cigarette products.

- (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or distribute an electronic cigarette product in Utah without first obtaining a license to sell an electronic cigarette product from the commission under this section.
- (2) 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 in Utah in accordance with this part.
- (3) Except as provided in Subsection (6), the commission shall issue a license to sell an electronic cigarette product to a person that:
 - (a) submits 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; and
 - (iii) any other information the commission requires to implement this chapter; and
 - (b) pays a fee:
 - (i) in the amount of \$30; or
 - (ii) if renewing the person's license, in the amount of \$20.
- (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 Regulation Act.
- (6) If the commission revokes a person's license to sell an electronic cigarette product under Subsection (5), the commission may not issue a license to sell an electronic cigarette 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, 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)(iii) that a person must provide in the application described in Subsection (3)(a).
- (9) It is a class B misdemeanor for a person to violate Subsection (1).

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