

1 **TOBACCO COORDINATION PROVISIONS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Patrice M. Arent**

5 Greg J. Curtis

6 AN ACT RELATING TO HEALTH; PROVIDING COORDINATING PROVISIONS FOR THE
7 TOBACCO MANUFACTURERS RESPONSIBILITY ACT; AND PROVIDING AN
8 EFFECTIVE DATE.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **26-1-30**, as last amended by Chapters 196 and 375, Laws of Utah 1997

12 **59-1-403**, as last amended by Chapter 95, Laws of Utah 1998

13 **59-14-401**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session

14 **63-2-206**, as last amended by Chapter 234, Laws of Utah 1997

15 ENACTS:

16 **26-44-301**, Utah Code Annotated 1953

17 **26-44-302**, Utah Code Annotated 1953

18 **26-44-303**, Utah Code Annotated 1953

19 **26-44-304**, Utah Code Annotated 1953

20 **26-44-305**, Utah Code Annotated 1953

21 **26-44-306**, Utah Code Annotated 1953

22 **26-44-307**, Utah Code Annotated 1953

23 **26-44-308**, Utah Code Annotated 1953

24 **59-14-407**, Utah Code Annotated 1953

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

26 Section 1. Section **26-1-30** is amended to read:

27 **26-1-30. Powers and duties of department.**

28 (1) The department shall:

29 (a) enter into cooperative agreements with the Department of Environmental Quality to
30 delineate specific responsibilities to assure that assessment and management of risk to human
31 health from the environment are properly administered; and

32 (b) consult with the Department of Environmental Quality and enter into cooperative
33 agreements, as needed, to ensure efficient use of resources and effective response to potential
34 health and safety threats from the environment, and to prevent gaps in protection from potential
35 risks from the environment to specific individuals or population groups.

36 (2) In addition to all other powers and duties of the department, it shall have and exercise
37 the following powers and duties:

38 (a) promote and protect the health and wellness of the people within the state;

39 (b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions
40 and purposes of this title to promote and protect the public health or to prevent disease and illness;

41 (c) investigate and control the causes of epidemic, infectious, communicable, and other
42 diseases affecting the public health;

43 (d) provide for the detection, reporting, prevention, and control of communicable,
44 infectious, acute, chronic, or any other disease or health hazard that the department considers to
45 be dangerous, important, or likely to affect the public health;

46 (e) collect and report information on causes of injury, sickness, death, and disability and
47 the risk factors that contribute to the causes of injury, sickness, death, and disability within the
48 state;

49 (f) collect, prepare, publish, and disseminate information to inform the public concerning
50 the health and wellness of the population, specific hazards, and risks that may affect the health and
51 wellness of the population and specific activities which may promote and protect the health and
52 wellness of the population;

53 (g) establish and operate programs necessary or desirable for the promotion or protection
54 of the public health and the control of disease or which may be necessary to ameliorate the major
55 causes of injury, sickness, death, and disability in the state, except that the programs shall not be
56 established if adequate programs exist in the private sector;

57 (h) establish, maintain, and enforce isolation and quarantine, and for this purpose only,
58 exercise physical control over property and individuals as the department finds necessary for the

59 protection of the public health;

60 (i) close theaters, schools, and other public places and forbid gatherings of people when
61 necessary to protect the public health;

62 (j) abate nuisances when necessary to eliminate sources of filth and infectious and
63 communicable diseases affecting the public health;

64 (k) make necessary sanitary and health investigations and inspections in cooperation with
65 local health departments as to any matters affecting the public health;

66 (l) establish laboratory services necessary to support public health programs and medical
67 services in the state;

68 (m) establish and enforce standards for laboratory services which are provided by any
69 laboratory in the state when the purpose of the services is to protect the public health;

70 (n) cooperate with the Labor Commission to conduct studies of occupational health
71 hazards and occupational diseases arising in and out of employment in industry, and make
72 recommendations for elimination or reduction of the hazards;

73 (o) cooperate with the local health departments, the Department of Corrections, the
74 Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims
75 Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any
76 victims of a sexual offense;

77 (p) investigate the cause of maternal and infant mortality;

78 (q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians
79 and drivers of motor vehicles killed in highway accidents be examined for the presence and
80 concentration of alcohol;

81 (r) provide the commissioner of public safety with monthly statistics reflecting the results
82 of the examinations provided for in Subsection (2)(q) and provide safeguards so that information
83 derived from the examinations is not used for a purpose other than the compilation of statistics
84 authorized in this subsection;

85 (s) establish qualifications for individuals permitted to draw blood pursuant to Section
86 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated
87 or revoked by the department;

88 (t) establish a uniform public health program throughout the state which includes
89 continuous service, employment of qualified employees, and a basic program of disease control,

90 vital and health statistics, sanitation, public health nursing, and other preventive health programs
91 necessary or desirable for the protection of public health;

92 (u) adopt rules and enforce minimum sanitary standards for the operation and maintenance
93 of:

94 (i) orphanages;
95 (ii) boarding homes;
96 (iii) summer camps for children;
97 (iv) lodging houses;
98 (v) hotels;
99 (vi) restaurants and all other places where food is handled for commercial purposes, sold,
100 or served to the public;

101 (vii) tourist and trailer camps;
102 (viii) service stations;
103 (ix) public conveyances and stations;
104 (x) public and private schools;
105 (xi) factories;
106 (xii) private sanatoria;
107 (xiii) barber shops;
108 (xiv) beauty shops;
109 (xv) physicians' offices;
110 (xvi) dentists' offices;
111 (xvii) workshops;
112 (xviii) industrial, labor, or construction camps;
113 (xix) recreational resorts and camps;
114 (xx) swimming pools, public baths, and bathing beaches;
115 (xxi) state, county, or municipal institutions, including hospitals and other buildings,
116 centers, and places used for public gatherings; and
117 (xxii) of any other facilities in public buildings and on public grounds;

118 (v) conduct health planning for the state;
119 (w) monitor the costs of health care in the state and foster price competition in the health
120 care delivery system;

121 (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26,
122 Chapter 21, Health Care Facility [~~Licensure~~] Licensing and Inspection Act;

123 (y) serve as the collecting agent, on behalf of the state, for the nursing facility assessment
124 fee imposed under Title 26, Chapter 35, Nursing Facility Assessment Act, and the [~~temporary~~]
125 provider assessment imposed under Chapter [~~36~~] 40, Utah [~~Medicaid Hospital Provider Temporary~~
126 ~~Assessment~~] Children's Health Insurance Act, and adopt rules for the enforcement and
127 administration of the assessments consistent with Chapters 35 and [~~36~~] 40;

128 (z) monitor and report to the Health Policy Commission created in Title 63C, Chapter 3,
129 Health Policy Commission, on the development of managed health care plans in rural areas of the
130 state, including the effect of the managed health care plans on costs, access, and availability of
131 providers located in the rural communities of the state; [~~and~~]

132 (aa) license the provision of child care[-];

133 (bb) provide a copy of the Master Settlement Agreement for review or purchase to any
134 person upon request and may charge a fee, established in accordance with Section 26-1-6, to any
135 person who desires to purchase a copy of the Master Settlement Agreement; and

136 (cc) upon request from a tobacco product manufacturer, as defined in Section 26-44-202,
137 report to the manufacturer the quantities of the manufacturer's cigarettes reported to the department
138 under Section 59-1-403.

139 Section 2. Section **26-44-301** is enacted to read:

140 **Part 3. Master Settlement Agreement Provisions**

141 **26-44-301. Construction of this part.**

142 This part sets forth ~~the~~ definitions in the Master Settlement Agreement ~~as of~~
142a **November**

143 **23, 1998,** that are cross-referenced in Part 2, Model Tobacco Settlement Statute. This part is
144 intended for convenience only and may not be construed as substantively or otherwise altering Part
145 2, Model Tobacco Settlement Statute, or the Master Settlement Agreement. ~~In the event of a~~
146 **discrepancy between this part and the Master Settlement Agreement, currently or as amended, the**
147 **provisions of the Master Settlement Agreement shall govern.** **WHERE PART 2 INSTRUCTS THAT A**
147a **TERM BE GIVEN THE SAME DEFINITION AS THAT TERM IS GIVEN IN THE MASTER SETTLEMENT**
147b **AGREEMENT, THE DEFINITION SHALL BE THAT SET FORTH IN THE MASTER SETTLEMENT**
147c **AGREEMENT, AS IT MAY BE AMENDED FROM TIME TO TIME.**

148 Section 3. Section **26-44-302** is enacted to read:

149 **26-44-302. Formula for inflation adjustments.**

150 The formula for calculating inflation adjustments, which is referenced in Subsection
151 26-44-202(1), is set forth in Exhibit C of the Master Settlement Agreement as follows, with the

152 exception of Subsection (7) which is omitted:

153 Exhibit C

154 Formula For Calculating Inflation Adjustment

155 (1) Any amount that, in any given year, is to be adjusted for inflation pursuant to
156 this exhibit, the "base amount," shall be adjusted upward by adding to such base amount
157 the inflation adjustment.

158 (2) The inflation adjustment shall be calculated by multiplying the base amount by
159 the inflation adjustment percentage applicable in that year.

160 (3) The inflation adjustment percentage applicable to payments due in the year
161 2000 shall be equal to the greater of 3% or the CPI%. For example, if the Consumer Price
162 Index for December 1999, as released in January 2000, is 2% higher than the Consumer
163 Price Index for December 1998, as released in January 1999, then the CPI% with respect
164 to a payment due in 2000 would be 2%. The inflation adjustment percentage applicable
165 in the year 2000 would thus be 3%.

166 (4) The inflation adjustment percentage applicable to payments due in any year
167 after 2000 shall be calculated by applying each year the greater of 3% or the CPI% on the
168 inflation adjustment percentage applicable to payments due in the prior year. Continuing
169 the example in Subsection (3) above, if the CPI% with respect to a payment due in 2001
170 is 6%, then the inflation adjustment percentage applicable in 2001 would be 9.1800000%,
171 an additional 6% applied on the 3% inflation adjustment percentage applicable in 2000,
172 and if the CPI% with respect to a payment due in 2002 is 4%, then the inflation adjustment
173 percentage applicable in 2002 would be 13.5472000%, an additional 4% applied on the
174 9.1800000% inflation adjustment percentage applicable in 2001.

175 (5) "Consumer Price Index" means the Consumer Price Index for All Urban
176 Consumers as published by the Bureau of Labor Statistics of the U.S. Department of
177 Labor, or other similar measures agreed to by the settling states and the participating
178 manufacturers.

179 (6) The "CPI%" means the actual total percent change in the Consumer Price Index
180 during the calendar year immediately preceding the year in which the payment in question
181 is due.

182 Section 4. Section **26-44-303** is enacted to read:

183 **26-44-303. Allocable Share.**

184 (1) "Allocable Share," which is referenced is Subsection 26-44-202(3), is defined in the
185 Master Settlement Agreement as follows:

186 "Allocable Share" means the percentage set forth for the state in question as listed in
187 Exhibit A hereto, without regard to any subsequent alteration or modification of such
188 state's percentage share agreed to or by or among any States; or, solely for the purpose of
189 calculating payments under subsection IX(c)(2) (and corresponding payments under
190 subsection IX(i)), the percentage disclosed for the state in question pursuant to subsection
191 IX(c)(2)(A) prior to June 30, 1999, without regard to any subsequent alteration or
192 modification of such state's percentage share agreed to by or among any states.

193 (2) The percentage set forth for Utah in Exhibit A to the Master Settlement Agreement is
194 0.4448869%.

195 (3) The percentage for calculating "Strategic Contribution Payments" to Utah under
196 subsection IX(c)(2) is to be determined by a three-member Allocation Committee in accordance
197 with Exhibit U of the Master Settlement Agreement.

198 Section 5. Section **26-44-304** is enacted to read:

199 **26-44-304. Released Claims.**

200 (1) "Released Claims," which is referenced in Subsection 26-44-202(7), is defined in the
201 Master Settlement Agreement as follows:

202 "Released Claims" means:

203 (1) for past conduct, acts or omissions, including any damages incurred in the
204 future arising from such past conduct, acts or omission, those claims directly or indirectly
205 based on, arising out of or in any way related, in whole or in part, to (A) the use, sale,
206 distribution, manufacture, development, advertising, marketing or health effects of, (B)
207 the exposure to, or (C) research, statements, or warnings regarding, tobacco products,
208 including, but not limited to, the claims asserted in the actions identified in Exhibit D, or
209 any comparable claims that were, could be or could have been asserted now or in the future
210 in those actions or in any comparable action in federal, state or local court brought by a
211 settling state or a releasing party, whether or not such settling state or releasing party has
212 brought such action, except for claims not asserted in the actions identified in Exhibit D
213 for outstanding liability under existing licensing, or similar, fee laws or existing tax laws,

214 but not excepting claims for any tax liability of the tobacco-related organizations or of any
215 released party with respect to such tobacco-related organizations, which claims are covered
216 by the release and covenants set forth in this agreement.

217 (2) for future conduct, acts or omissions, only those monetary claims directly or
218 indirectly based on, arising out of or in any way related to, in whole or in part, the use of
219 or exposure to tobacco products manufactured in the ordinary course of business, including
220 without limitation any future claims for reimbursement of health care costs allegedly
221 associated with the use of or exposure to tobacco products.

222 (2) Exhibit D is a list of the titles and docket numbers of the lawsuits brought by states
223 against tobacco manufacturers and the courts in which those lawsuits were filed as of the date that
224 the Master Settlement Agreement was entered into.

225 Section 6. Section **26-44-305** is enacted to read:

226 **26-44-305. Releasing Parties.**

227 "Releasing Parties," which is referenced in Subsection 26-44-202(8), is defined in the
228 Master Settlement Agreement as follows:

229 (1) "Releasing Parties" means each settling state and any of its past, present and
230 future agents, officials acting in their official capacities, legal representatives, agencies,
231 departments, commissions and divisions; and also means, to the full extent of the power
232 of the signatories hereto to release past, present, and future claims, the following: (1) any
233 settling state's subdivisions, political or otherwise, including, but not limited to,
234 municipalities, counties, parishes, villages, unincorporated districts and hospital districts,
235 public entities, public instrumentalities and public educational institutions; and (2) persons
236 or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general,
237 qui tam, taxpayer, or any other capacity, whether or not any of them participate in this
238 settlement, (A) to the extent that any such person or entity is seeking relief on behalf of or
239 generally applicable to the general public in such settling state or the people of the state,
240 as opposed solely to private or individual relief for separate and distinct injuries, or (B) to
241 the extent that any such entity, as opposed to an individual, is seeking recovery of
242 health-care expenses, other than premium or capitation payments for the benefit of present
243 or retired state employees, paid or reimbursed, directly or indirectly, by a settling state.

244 Section 7. Section **26-44-306** is enacted to read:

245 **26-44-306. Original participating manufacturer and related terms.**

246 (1) "Original participating manufacturer," which is referenced in Subsection
 247 26-44-202(9)(a)(i), is defined in the Master Settlement Agreement as follows:

248 "Original participating manufacturer" means Brown & Williamson Tobacco
 249 Corporation, Lorillard Tobacco Company, Phillip Morris Incorporated and R.J. Reynolds
 250 Tobacco Company, and the respective successors of each of the foregoing. Except as
 251 expressly providing in this Agreement, once an entity becomes an Original Participating
 252 Manufacturer, such entity shall permanently retain the status of Original Participating
 253 Manufacturer.

254 (2) Subsection II(mm) of the Master Settlement Agreement, which is referenced in
 255 Subsection 26-44-202(9)(a)(i), is the following definition of "relative market share" $\hat{h} [\hat{z}] \hat{h} _ \hat{h} \hat{z} \hat{h}$

256 "Relative market share" means an original participating manufacturer's respective
 257 share, expressed as a percentage, of the total number of individual cigarettes shipped in or
 258 to the 50 United States, the District of Columbia and Puerto Rico by all the original
 259 participating manufacturers during the calendar year immediately preceding the year in
 260 which the payment at issue is due, regardless of when such payment is made, as measured
 261 by the original participating manufacturers' reports of shipments of cigarettes to
 262 Management Science Associates, Inc., or a successor entity acceptable to both the original
 263 participating manufacturers and a majority of those attorneys general who are both the
 264 attorney general of a settling state and a member of the NAAG executive committee at the
 265 time in question. A cigarette shipped by more than one participating manufacturer shall
 266 be deemed to have been shipped solely by the first participating manufacturer to do so. For
 267 purposes of the definition and determination of "relative market share," 0.09 ounces of "roll
 268 your own" tobacco shall constitute one individual cigarette.

269 (3) Subsection II(z) of the Master Settlement Agreement, which is referenced in
 270 Subsection 26-44-202(9)(a)(i), is the following definition of "market share" $\hat{h} [\hat{z}] \hat{h} _ \hat{h} \hat{z} \hat{h}$

271 "Market share" means a tobacco product manufacturer's respective share, expressed
 272 as a percentage, of the total number of individual cigarettes sold in the 50 United States,
 273 the District of Columbia and Puerto Rico during the applicable calendar year, as measured
 274 by excise taxes collected by the federal government and, in the case of sales in Puerto Rico,
 275 arbitrios de cigarillos collected by the Puerto Rico taxing authority. For purposes of the

276 definition and determination of "market share" with respect to calculations under
277 Subsection IX(i), 0.09 ounces of "roll your own" tobacco shall constitute one individual
278 cigarette; for purposes of the definition and determination of "market share" with respect
279 to all other calculations, 0.0325 ounces of "roll your own" tobacco shall constitute one
280 individual cigarette.

281 Section 8. Section **26-44-307** is enacted to read:

282 **26-44-307. Participating manufacturer.**

283 (1) "Participating manufacturer," which is referenced in Subsection 26-44-203(1), is
284 defined in the Master Settlement Agreement as follows:

285 "Participating manufacturer" means a tobacco product manufacturer that is or
286 becomes a signatory to this agreement, provided that (1) in the case of a tobacco product
287 manufacturer that is not an original participating manufacturer, such tobacco product
288 manufacturer is bound by this agreement and the consent decree, or, in any settling state
289 that does not permit amendment of the consent decree, a consent decree containing terms
290 identical to those set forth in the consent decree, in all settling states in which this
291 agreement and the consent decree binds original participating manufacturers, provided,
292 however, that such tobacco product manufacturer need only become bound by the consent
293 decree in those settling state in which the settling state has filed a released claim against
294 it, and (2) in the case of a tobacco product manufacturer that signs this agreement after the
295 MSA execution date, such tobacco product manufacturer, within a reasonable period of
296 time after signing this agreement, makes any payments, including interest thereon at the
297 prime rate, that it would have been obligated to make in the intervening period had it been
298 a signatory as of the MSA execution date. "Participating manufacturer" shall also include
299 the successor of a participating manufacturer. Except as expressly provided in this
300 agreement, once an entity becomes a participating manufacturer such entity shall
301 permanently retain the status of participating manufacturer. Each participating
302 manufacturer shall regularly report its shipments of cigarettes in or to the 50 United States,
303 the District of Columbia and Puerto Rico to Management Science Associates, Inc., or a
304 successor entity as set forth in Subsection (mm). Solely for purposes of calculations
305 pursuant to Subsection IX(d), a tobacco product manufacturer that is not a signatory to this
306 agreement shall be deemed to be a "participating manufacturer" if the original participating

307 manufacturers unanimously consent in writing.

308 (2) Subsection IX(d) relates to Nonparticipating Manufacturer Adjustments.

309 Section 9. Section **26-44-308** is enacted to read:

310 **26-44-308. Payments by subsequent participating manufacturers.**

311 Section XI(i)(2) and IX(i)(3) of the Master Settlement Agreement, which are referenced
312 in Subsection 26-44-203(2)(b), involve payments by subsequent participating manufacturers and
313 providers as follows:

314 (1) A subsequent participating manufacturer shall have payment obligations under
315 this agreement only in the event that its market share in any calendar year exceeds the
316 greater of (1) its 1998 market share or (2) 125% of its 1997 market share, subject to the
317 provisions of subsection (i)(4). In the year following any such calendar year, such
318 subsequent participating manufacturer shall make payments corresponding to those due in
319 that same following year from the original participating manufacturers pursuant to
320 subsections VI(c), except for the payment due on March 31, 1999, IX(c)(1), IX(c)(2) and
321 IX(e). The amounts of such corresponding payments by a subsequent participating
322 manufacturer are in addition to the corresponding payments that are due from the original
323 participating manufacturers and shall be determined as described in subsection (2) and (3)
324 below. Such payments by a subsequent participating manufacturer shall (A) be due on the
325 same dates as the corresponding payments are due from original participating
326 manufacturers; (B) be for the same purpose as such corresponding payments; and (C) be
327 paid, allocated and distributed in the same manner as such corresponding payments.

328 (2) The base amount due from a subsequent participating manufacturer on any
329 given date shall be determined by multiplying (A) the corresponding base amount due on
330 the same date from all of the original participating manufacturers, as such base amount is
331 specified in the corresponding subsection of this agreement and is adjusted by the volume
332 adjustment, except for the provisions of Subsection (B)(ii) of Exhibit E, but before such
333 base amount is modified by any other adjustments, reductions or offsets, by (B) the quotient
334 produced by dividing (i) the result of (x) such subsequent participating manufacturer's
335 applicable market share, the applicable market share being that for the calendar year
336 immediately preceding the year in which the payment in question is due, minus (y) the
337 greater of (1) its 1998 market share or (2) 125% of its 1997 market share, by (ii) the

338 aggregate market shares of the original participating manufacturers, the applicable market
339 shares being those for the calendar year immediately preceding the year in which the
340 payment ~~h~~ **[is] IN h** question is due.

341 (3) Any payment due from a subsequent participating manufacturer under
342 Subsection (1) and (2) above shall be subject, up to the full amount of such payment, to the
343 inflation adjustment, the nonsettling states reduction, the NPM adjustment, the offset for
344 miscalculated or disputed payments described in Subsection XI(i), the Federal Tobacco
345 Legislation Offset, the Litigating Releasing Parties Offset and the offsets for claims over
346 described in subsections XII(a)(4)(B) and XII(a)(8), to the extent that such adjustments,
347 reductions or offsets would apply to the corresponding payment due from the original
348 participating manufacturers. Provided, however, that all adjustments and offsets to which
349 a subsequent participating manufacturer is entitled may only be applied against payments
350 by such subsequent participating manufacturer, if any, that are due within 12 months after
351 the date on which the subsequent participating manufacturer becomes entitled to such
352 adjustment or makes the payment that entitles it to such offset, and shall not be carried
353 forward beyond that time even if not fully used.

354 (4) For purposes of this Subsection (i), the 1997, or 1998, as applicable, market
355 share, and 125% thereof, of those subsequent participating manufacturers that either (A)
356 became a signatory to the agreement more than 60 days after the MSA execution date or
357 (B) had no market share in 1997, or 1998, as applicable, shall equal zero.

358 Section 10. Section **59-1-403** is amended to read:

359 **59-1-403. Confidentiality -- Penalty -- Application to property tax.**

360 (1) Any tax commissioner, agent, clerk, or other officer or employee of the commission
361 or any representative, agent, clerk, or other officer or employee of any county, city, or town may
362 not divulge or make known in any manner any information gained by him from any return filed
363 with the commission. The officials charged with the custody of such returns are not required to
364 produce any of them or evidence of anything contained in them in any action or proceeding in any
365 court, except:

366 (a) in accordance with judicial order;

367 (b) on behalf of the commission in any action or proceeding under this title or other law
368 under which persons are required to file returns with the commission;

369 (c) on behalf of the commission in any action or proceeding to which the commission is
370 a party; or

371 (d) on behalf of any party to any action or proceeding under this title when the report or
372 facts shown thereby are directly involved in such action or proceeding. In any event, the court may
373 require the production of, and may admit in evidence, any portion of reports or of the facts shown
374 by them, as are specifically pertinent to the action or proceeding.

375 (2) This section does not prohibit:

376 (a) a person or his duly authorized representative from receiving a copy of any return or
377 report filed in connection with that person's own tax;

378 (b) the publication of statistics as long as they are classified to prevent the identification
379 of particular reports or returns;

380 (c) the inspection by the attorney general or other legal representative of the state of the
381 report or return of any taxpayer:

382 (i) who brings action to set aside or review the tax based on such report or return;

383 (ii) against whom an action or proceeding is contemplated or has been instituted under this
384 title; or

385 (iii) against whom the state has an unsatisfied money judgment.

386 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission
387 may, by rule, provide for a reciprocal exchange of information with the United States Internal
388 Revenue Service or the revenue service of any other state.

389 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
390 corporate franchise tax, the commission may, by rule, share information gathered from returns and
391 other written statements with the federal government, any other state, any of their political
392 subdivisions, or any political subdivision of this state, except as limited by Sections 59-12-209 and
393 59-12-210, if these political subdivisions or the federal government grant substantially similar
394 privileges to this state.

395 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
396 corporate franchise tax, the commission may, by rule, provide for the issuance of information
397 concerning the identity and other information of taxpayers who have failed to file tax returns or
398 to pay any tax due.

399 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and

400 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, any records,
401 returns, and other information filed with the commission under Title 59, Chapter 13, Motor and
402 Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program
403 participation fee, as requested by the executive secretary.

404 (e) (i) Notwithstanding Subsection (1), to provide information necessary for the
405 implementation of Title 26, Chapter 44, Tobacco Manufacturers Settlement and Responsibility
406 Act, the commission shall annually report to the executive director of the Department of Health
407 on or before March 1:

408 (A) the quantity of cigarettes, as defined in Section 26-44-202, produced by each
409 manufacturer and reported to the commission for the previous calendar year under Section
410 59-14-407; and

411 (B) the quantity of cigarettes, as defined in Section 26-44-202, produced by each
412 manufacturer for which a tax refund was granted during the previous calendar year under Section
413 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

414 (ii) The records received by the executive director of the Department of Health under
415 Subsection (3)(e)(i) are protected records under Title 63, Chapter 2, Government Records Access
416 and Management Act.

417 (4) Reports and returns shall be preserved for at least three years and then the commission
418 may destroy them.

419 (5) Any person who violates this section is guilty of a class A misdemeanor. If the
420 offender is an officer or employee of the state, he shall be dismissed from office and be
421 disqualified from holding public office in this state for a period of five years thereafter.

422 (6) This part does not apply to the property tax.

423 Section 11. Section **59-14-401** is amended to read:

424 **59-14-401. Refund of taxes paid -- Exemption for exported cigarettes and tobacco**
425 **products.**

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

429 (i) is a licensed dealer [~~and~~];

430 (ii) signs an affidavit that the [~~goods were~~] cigarette or tobacco product was so sold and

431 shipped[. ~~The seller in this state shall furnish~~];

432 (iii) furnishes from the purchaser a written acknowledgment that [he] the purchaser has
433 received [the goods and];

434 (A) the cigarette or tobacco product; and

435 (B) the amount of [stamps, together with] any stamps for which a refund is requested;

436 (iv) reports the name and address of the purchaser[-]; and

437 (v) reports the name of the manufacturer of the cigarette, as defined under Section

438 26-44-202, reported under Section 59-14-407 if the cigarette is manufactured by a manufacturer

439 required to place funds into escrow under Section 26-44-203.

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

442 (2) Wholesalers or distributors in this state who export taxable cigarettes and tobacco
443 products to a regular dealer in another state shall be exempt from the payment of any tax upon the
444 sale of the articles upon furnishing such proof of the sale and exportation as the commission may
445 require.

446 Section 12. Section **59-14-407** is enacted to read:

447 **59-14-407. Reporting of manufacturer name.**

448 (1) As used in this section:

449 (a) "Cigarette" has the same meaning as defined in Section 26-44-202.

450 (b) "Tobacco product manufacturer" has the same meaning as defined in Section

451 26-44-202.

452 (2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section

453 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured by a

454 tobacco product manufacturer required to place funds into escrow under Section 26-44-203 shall

455 report annually to the commission:

456 (a) the quantity of cigarettes in the package or container; and

457 (b) the name of the manufacturer of the cigarettes.

458 (3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required

459 to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette

460 under Section 26-44-202 and manufactured by a tobacco product manufacturer required to place

461 funds into escrow under Section 26-44-203 shall report annually to the commission:

- 462 (a) the quantity of cigarettes upon which the tax is levied; and
- 463 (b) the name of the manufacturer of each cigarette.
- 464 (4) The reports under Subsections (2) and (3) shall be made no later than January 31 for
- 465 the preceding calendar year pursuant to rules established by the commission in accordance with
- 466 Title 63, Chapter 46a, Utah administrative Rulemaking Act.

467 Section 13. Section **63-2-206** is amended to read:

468 **63-2-206. Sharing records.**

469 (1) A governmental entity may provide a record that is private, controlled, or protected to
470 another governmental entity, a government-managed corporation, a political subdivision, the
471 federal government, or another state if the requesting entity:

472 (a) serves as a repository or archives for purposes of historical preservation, administrative
473 maintenance, or destruction;

474 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record
475 is necessary to a proceeding or investigation;

476 (c) is authorized by state statute to conduct an audit and the record is needed for that
477 purpose; or

478 (d) is one that collects information for presentence, probationary, or parole purposes.

479 (2) A governmental entity may provide a private or controlled record or record series to
480 another governmental entity, a political subdivision, a government-managed corporation, the
481 federal government, or another state if the requesting entity provides written assurance:

482 (a) that the record or record series is necessary to the performance of the governmental
483 entity's duties and functions;

484 (b) that the record or record series will be used for a purpose similar to the purpose for
485 which the information in the record or record series was collected or obtained; and

486 (c) that the use of the record or record series produces a public benefit that outweighs the
487 individual privacy right that protects the record or record series.

488 (3) A governmental entity may provide a record or record series that is protected under
489 Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a
490 government-managed corporation, the federal government, or another state if:

491 (a) the record is necessary to the performance of the requesting entity's duties and
492 functions; or

493 (b) the record will be used for a purpose similar to the purpose for which the information
494 in the record or record series was collected or obtained.

495 (4) (a) A governmental entity shall provide a private, controlled, or protected record to
496 another governmental entity, a political subdivision, a government-managed corporation, the
497 federal government, or another state if the requesting entity:

498 (i) is entitled by law to inspect the record;

499 (ii) is required to inspect the record as a condition of participating in a state or federal
500 program or for receiving state or federal funds; or

501 (iii) is an entity described in Subsection 63-2-206(1)(a), (b), (c), or (d).

502 (b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection
503 63-2-304(4).

504 (5) Before disclosing a record or record series under this section to another governmental
505 entity, another state, the United States, or a foreign government, the originating governmental
506 entity shall:

507 (a) inform the recipient of the record's classification and the accompanying restrictions on
508 access; and

509 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the
510 recipient's written agreement which may be by mechanical or electronic transmission that it will
511 abide by those restrictions on access unless a statute, federal regulation, or interstate agreement
512 otherwise governs the sharing of the record or record series.

513 (6) A governmental entity may disclose a record to another state, the United States, or a
514 foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with
515 the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty,
516 federal statute, compact, federal regulation, or state statute.

517 (7) A governmental entity receiving a record under this section is subject to the same
518 restrictions on disclosure of the material as the originating entity.

519 (8) Notwithstanding any other provision of this section, if a more specific court rule or
520 order, state statute, federal statute, or federal regulation prohibits or requires sharing information,
521 that rule, order, statute, or federal regulation controls.

522 (9) The following records may not be shared under this section:

523 (a) except as provided under Section 59-1-403, records held by the State Tax Commission

524 that pertain to any person and that are gathered under authority of Title 59, Revenue and Taxation;

525 (b) records held by the Division of Oil, Gas and Mining that pertain to any person and that
526 are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining;
527 and

528 (c) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

529 (10) Records that may evidence or relate to a violation of law may be disclosed to a
530 government prosecutor, peace officer, or auditor.

531 Section 14. **Effective date.**

532 (1) It is the intent of the Legislature that this bill only take effect if H.B. 132, Tobacco
533 Manufacturers Responsibility Act, is approved by both houses during the 1999 General Session
534 and is either signed by the governor, not vetoed by the governor within the constitutional time limit
535 of Utah Constitution Article VII, Section 8, or, in the case of a veto, the veto is overridden.

536 (2) If Subsection (1) is satisfied, this act takes effect on July 1, 1999.

Legislative Review Note
as of 2-18-99 8:40 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel