

**TOBACCO MANUFACTURERS  
RESPONSIBILITY ACT AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Karen W. Morgan**

AN ACT RELATING TO THE UTAH HEALTH CODE AND REVENUE AND TAXATION;  
TRANSFERRING THE TOBACCO MANUFACTURERS RESPONSIBILITY ACT FROM THE  
HEALTH CODE TO THE REVENUE AND TAXATION CODE; REQUIRING TOBACCO  
MANUFACTURERS WHO PLACE FUNDS INTO ESCROW TO CERTIFY COMPLIANCE  
WITH THE STATE TAX COMMISSION RATHER THAN THE EXECUTIVE DIRECTOR OF  
THE DEPARTMENT OF HEALTH; AND MAKING CONFORMING AMENDMENTS.

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

AMENDS:

- 26-1-30**, as last amended by Chapter 364, Laws of Utah 1999
- 59-1-403**, as last amended by Chapter 364, Laws of Utah 1999
- 59-14-401**, as last amended by Chapter 364, Laws of Utah 1999
- 59-14-407**, as enacted by Chapter 364, Laws of Utah 1999
- 63-2-206**, as last amended by Chapter 364, Laws of Utah 1999

ENACTS:

- 59-14-801**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 59-14-600**, (Renumbered from 26-44-101, as enacted by Chapter 344, Laws of Utah 1999)
- 59-14-601**, (Renumbered from 26-44-201, as enacted by Chapter 344, Laws of Utah 1999)
- 59-14-602**, (Renumbered from 26-44-202, as enacted by Chapter 344, Laws of Utah 1999)
- 59-14-603**, (Renumbered from 26-44-203, as enacted by Chapter 344, Laws of Utah 1999)
- 59-14-701**, (Renumbered from 26-44-301, as enacted by Chapter 364, Laws of Utah 1999)
- 59-14-702**, (Renumbered from 26-44-302, as enacted by Chapter 364, Laws of Utah 1999)
- 59-14-703**, (Renumbered from 26-44-303, as enacted by Chapter 364, Laws of Utah 1999)
- 59-14-704**, (Renumbered from 26-44-304, as enacted by Chapter 364, Laws of Utah 1999)

**59-14-705**, (Renumbered from 26-44-305, as enacted by Chapter 364, Laws of Utah 1999)

**59-14-706**, (Renumbered from 26-44-306, as enacted by Chapter 364, Laws of Utah 1999)

**59-14-707**, (Renumbered from 26-44-307, as enacted by Chapter 364, Laws of Utah 1999)

**59-14-708**, (Renumbered from 26-44-308, as enacted by Chapter 364, Laws of Utah 1999)

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

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

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

(1) The department shall:

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

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

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

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

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

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

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

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

(f) collect, prepare, publish, and disseminate information to inform the public concerning the

health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

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

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

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

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

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

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

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

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

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

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

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

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

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

(t) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

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

- (i) orphanages;
- (ii) boarding homes;
- (iii) summer camps for children;
- (iv) lodging houses;
- (v) hotels;
- (vi) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;
- (vii) tourist and trailer camps;
- (viii) service stations;
- (ix) public conveyances and stations;
- (x) public and private schools;
- (xi) factories;

- (xii) private sanatoria;
- (xiii) barber shops;
- (xiv) beauty shops;
- (xv) physicians' offices;
- (xvi) dentists' offices;
- (xvii) workshops;
- (xviii) industrial, labor, or construction camps;
- (xix) recreational resorts and camps;
- (xx) swimming pools, public baths, and bathing beaches;
- (xxi) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and
- (xxii) of any other facilities in public buildings and on public grounds;
- (v) conduct health planning for the state;
- (w) monitor the costs of health care in the state and foster price competition in the health care delivery system;
- (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
- (y) serve as the collecting agent, on behalf of the state, for the nursing facility assessment fee imposed under Title 26, Chapter 35, Nursing Facility Assessment Act, and the provider assessment imposed under Chapter 40, Utah Children's Health Insurance Act, and adopt rules for the enforcement and administration of the assessments consistent with Chapters 35 and 40;
- (z) monitor and report to the Health Policy Commission created in Title 63C, Chapter 3, Health Policy Commission, on the development of managed health care plans in rural areas of the state, including the effect of the managed health care plans on costs, access, and availability of providers located in the rural communities of the state; and
- (aa) license the provision of child care[?];
- ~~[(bb) provide a copy of the Master Settlement Agreement for review or purchase to any person upon request and may charge a fee, established in accordance with Section 26-1-6, to any~~

~~person who desires to purchase a copy of the Master Settlement Agreement; and]~~

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

Section 2. Section **59-1-403** is amended to read:

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

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

(a) in accordance with judicial order;

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

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

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

(2) This section does not prohibit:

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

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

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

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

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

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

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

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

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

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, any records, returns, and other information filed with the commission under Title 59, Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee, as requested by the executive secretary.

(e) ~~[(f)]~~ Notwithstanding Subsection (1), ~~[to provide information necessary for the implementation of Title 26, Chapter 44, Tobacco Manufacturers Responsibility Act, the commission shall annually report to the executive director of the Department of Health on or before March 1]~~ upon request from a tobacco product manufacturer, as defined in Section 59-14-602, the commission shall report to the manufacturer:

~~[(A)]~~ (i) the quantity of cigarettes, as defined in Section ~~[26-44-202]~~ 59-14-602, produced by ~~[each]~~ the manufacturer and reported to the commission for the previous calendar year under

Section 59-14-407; and

~~[(B)]~~ (ii) the quantity of cigarettes, as defined in Section ~~[26-44-202]~~ 59-14-602, produced by ~~[each]~~ the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

~~[(ii) The records received by the executive director of the Department of Health under Subsection (3)(c)(i) are protected records under Title 63, Chapter 2, Government Records Access and Management Act.]~~

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

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

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

Section 3. Section **59-14-401** is amended to read:

**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 ~~[26-44-202]~~ 59-14-602, reported under Section 59-14-407 if the cigarette is manufactured by a manufacturer required to place funds into escrow under Section ~~[26-44-203]~~ 59-14-603.

(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.

Section 4. Section **59-14-407** is amended to read:

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

(1) As used in this section:

(a) "Cigarette" has the same meaning as defined in Section ~~[26-44-202]~~ 59-14-602.

(b) "Tobacco product manufacturer" has the same meaning as defined in Section ~~[26-44-202]~~ 59-14-602.

(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 by a tobacco product manufacturer required to place funds into escrow under Section ~~[26-44-203]~~ 59-14-603 shall report annually 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 ~~[26-44-202]~~ 59-14-602 and manufactured by a tobacco product manufacturer required to place funds into escrow under Section ~~[26-44-203]~~ 59-14-603 shall report annually 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 January 31 for the preceding calendar year pursuant to rules established by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 5. Section **59-14-600**, which is renumbered from Section 26-44-101 is renumbered and amended to read:

**Part 6. Model Tobacco Settlement Statute**

~~[26-44-101].~~            **59-14-600. Title.**

~~[The chapter]~~ This part is known as the "Model Tobacco ~~[Manufacturers Responsibility Act]~~ Settlement Statute."

Section 6. Section **59-14-601**, which is renumbered from Section 26-44-201 is renumbered and amended to read:

~~[26-44-201].~~            **59-14-601. Findings and purpose.**

(1) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the State (tied in

part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section 7. Section **59-14-602**, which is renumbered from Section 26-44-202 is renumbered and amended to read:

~~[26-44-202]~~.                    **59-14-602. Definitions.**

As used in this part:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of

tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own," (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with Subsection [~~26-44-203~~] 59-14-603(2).

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) (a) "Tobacco product manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection II(z) of the Master

Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(ii) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

(b) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any Subsection (9)(a)(i) through (iii).

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The State Tax Commission shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section 8. Section **59-14-603**, which is renumbered from Section 26-44-203 is renumbered and amended to read:

~~[26-44-203].~~                    **59-14-603. Requirements.**

(1) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in Section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(i) 1999: \$.0094241 per unit sold after the date of enactment of this Act;

(ii) 2000: \$.0104712 per unit sold;

(iii) for each of 2001 and 2002: \$.0136125 per unit sold;

(iv) for each of 2003 through 2006: \$.0167539 per unit sold; and

(v) for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to Subsection (1)(b) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this Subsection (2)(a):

(i) in the order in which they were placed into escrow; and

(ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to Section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in Section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) to the extent not released from escrow under Subsection (2)(a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to Subsection (1)(b) shall annually certify to the [~~executive director~~] commission that it is in compliance with Subsection (1)(b) and Subsection (2). The [~~executive director~~] commission may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under Subsection (1)(b) and Subsection (2). Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this Subsection (1)(b) and Subsection (2) shall:

(a) be required within 15 days to place such funds into escrow as shall bring it into

compliance with Subsection (1)(b) and Subsection (2). The court, upon a finding of a violation of Subsection (1)(b) or Subsection (2), may impose a civil penalty to be paid to the General Fund in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(b) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with Subsection (1)(b) and Subsection (2). The court, upon a finding of a knowing violation of Subsection (1)(b) or Subsection (2), may impose a civil penalty to be paid to the General Fund of the State in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

(c) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

(4) Each failure to make an annual deposit required under Subsection (1)(b) shall constitute a separate violation.

(5) A court shall award the State its costs and attorneys fees incurred in bringing any action in which the State establishes that a tobacco product manufacturer has violated this section.

Section 9. Section **59-14-701**, which is renumbered from Section 26-44-301 is renumbered and amended to read:

#### **Part 7. Master Settlement Agreement Provisions**

##### **~~[26-44-301].~~ 59-14-701. Construction of this part.**

This part sets forth definitions in the Master Settlement Agreement that are cross-referenced in Part [2] 6, Model Tobacco Settlement Statute. This part is intended for convenience only and may not be construed as substantively or otherwise altering Part [2] 6, Model Tobacco Settlement Statute, or the Master Settlement Agreement. Where Part [2] 6 instructs that a term be given the same definition as that term is given in the Master Settlement Agreement, the definition shall be that set forth in the Master Settlement Agreement, as it may be amended from time to time.

Section 10. Section **59-14-702**, which is renumbered from Section 26-44-302 is renumbered

and amended to read:

~~[26-44-302].~~                    **59-14-702. Formula for inflation adjustments.**

The formula for calculating inflation adjustments, which is referenced in Subsection ~~[26-44-202]~~ 59-14-602(1), is set forth in Exhibit C of the Master Settlement Agreement as follows, with the exception of Subsection (7) which is omitted:

Exhibit C

Formula For Calculating Inflation Adjustment

(1) Any amount that, in any given year, is to be adjusted for inflation pursuant to this Exhibit, the "Base Amount," shall be adjusted upward by adding to such Base Amount the Inflation Adjustment.

(2) The Inflation Adjustment shall be calculated by multiplying the Base Amount by the Inflation Adjustment Percentage applicable in that year.

(3) The Inflation Adjustment Percentage applicable to payments due in the year 2000 shall be equal to the greater of 3% or the CPI%. For example, if the Consumer Price Index for December 1999, as released in January 2000, is 2% higher than the Consumer Price Index for December 1998, as released in January 1999, then the CPI% with respect to a payment due in 2000 would be 2%. The Inflation Adjustment Percentage applicable in the year 2000 would thus be 3%.

(4) The Inflation Adjustment Percentage applicable to payments due in any year after 2000 shall be calculated by applying each year the greater of 3% or the CPI% on the Inflation Adjustment Percentage applicable to payments due in the prior year. Continuing the example in subsection (3) above, if the CPI% with respect to a payment due in 2001 is 6%, then the Inflation Adjustment Percentage applicable in 2001 would be 9.1800000%, an additional 6% applied on the 3% Inflation Adjustment Percentage applicable in 2000, and if the CPI% with respect to a payment due in 2002 is 4%, then the Inflation Adjustment Percentage applicable in 2002 would be 13.5472000%, an additional 4% applied on the 9.1800000% Inflation Adjustment Percentage applicable in 2001.

(5) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or other similar measures agreed to by the Settling States and the Participating Manufacturers.

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

Section 11. Section **59-14-703**, which is renumbered from Section 26-44-303 is renumbered and amended to read:

~~[26-44-303].~~                    **59-14-703. Allocable share.**

(1) "Allocable Share," which is referenced is Subsection ~~[26-44-202]~~ 59-14-602(3), is defined in the Master Settlement Agreement as follows:

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

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

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

Section 12. Section **59-14-704**, which is renumbered from Section 26-44-304 is renumbered and amended to read:

~~[26-44-304].~~                    **59-14-704. Released claims.**

(1) "Released Claims," which is referenced in Subsection ~~[26-44-202]~~ 59-14-602(7), is defined in the Master Settlement Agreement as follows:

"Released Claims" means:

(1) for past conduct, acts or omissions, including any damages incurred in the future arising from such past conduct, acts or omissions, those Claims directly or indirectly based on, arising out of or in any way related, in whole or in part, to (A) the use, sale, distribution, manufacture,

development, advertising, marketing or health effects of, (B) the exposure to, or (C) research, statements, or warnings regarding, Tobacco Products, including, but not limited to, the Claims asserted in the actions identified in Exhibit D, or any comparable Claims that were, could be or could have been asserted now or in the future in those actions or in any comparable action in federal, state or local court brought by a Settling State or a Releasing Party, whether or not such Settling State or Releasing Party has brought such action, except for claims not asserted in the actions identified in Exhibit D for outstanding liability under existing licensing, or similar, fee laws or existing tax laws, but not excepting claims for any tax liability of the Tobacco-Related Organizations or of any Released Party with respect to such Tobacco-Related Organizations, which claims are covered by the release and covenants set forth in this Agreement;

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

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

Section 13. Section **59-14-705**, which is renumbered from Section 26-44-305 is renumbered and amended to read:

~~[26-44-305]~~.            **59-14-705. Releasing parties.**

"Releasing Parties," which is referenced in Subsection ~~[26-44-202]~~ 59-14-602(8), is defined in the Master Settlement Agreement as follows:

(1) "Releasing Parties" means each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, the following: (1) any Settling State's subdivisions, political or otherwise, including, but not limited to, municipalities, counties, parishes, villages,

unincorporated districts and hospital districts, public entities, public instrumentalities and public educational institutions; and (2) persons or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in this settlement, (A) to the extent that any such person or entity is seeking relief on behalf of or generally applicable to the general public in such Settling State or the people of the State, as opposed solely to private or individual relief for separate and distinct injuries, or (B) to the extent that any such entity, as opposed to an individual, is seeking recovery of health-care expenses, other than premium or capitation payments for the benefit of present or retired state employees, paid or reimbursed, directly or indirectly, by a Settling State.

Section 14. Section **59-14-706**, which is renumbered from Section 26-44-306 is renumbered and amended to read:

~~[26-44-306].~~                    **59-14-706. Original participating manufacturer and related terms.**

(1) "Original Participating Manufacturer," which is referenced in Subsection ~~[26-44-202]~~ 59-14-602(9)(a)(i), is defined in the Master Settlement Agreement as follows:

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

(2) Subsection II(mm) of the Master Settlement Agreement, which is referenced in Subsection ~~[26-44-202]~~ 59-14-602(9)(a)(i), is the following definition of "relative market share":

"Relative market share" means an original participating manufacturer's respective share, expressed as a percentage, of the total number of individual cigarettes shipped in or to the 50 United States, the District of Columbia and Puerto Rico by all the original participating manufacturers during the calendar year immediately preceding the year in which the payment at issue is due, regardless of when such payment is made, as measured by the original participating manufacturers' reports of shipments of cigarettes to Management Science Associates, Inc., or a successor entity acceptable to both the original participating manufacturers and a majority of those attorneys general who are both

the attorney general of a settling state and a member of the NAAG executive committee at the time in question. A cigarette shipped by more than one participating manufacturer shall be deemed to have been shipped solely by the first participating manufacturer to do so. For purposes of the definition and determination of "relative market share," 0.09 ounces of "roll your own" tobacco shall constitute one individual cigarette.

(3) Subsection II(z) of the Master Settlement Agreement, which is referenced in Subsection ~~[26-44-202]~~ 59-14-602(9)(a)(i), is the following definition of "market share":

"Market share" means a tobacco product manufacturer's respective share, expressed as a percentage, of the total number of individual cigarettes sold in the 50 United States, the District of Columbia and Puerto Rico during the applicable calendar year, as measured by excise taxes collected by the federal government and, in the case of sales in Puerto Rico, arbitrios de cigarillos collected by the Puerto Rico taxing authority. For purposes of the definition and determination of "market share" with respect to calculations under subsection IX(i), 0.09 ounces of "roll your own" tobacco shall constitute one individual cigarette; for purposes of the definition and determination of "market share" with respect to all other calculations, 0.0325 ounces of "roll your own" tobacco shall constitute one individual cigarette.

Section 15. Section **59-14-707**, which is renumbered from Section 26-44-307 is renumbered and amended to read:

~~[26-44-307].~~                    **59-14-707. Participating manufacturer.**

(1) "Participating Manufacturer," which is referenced in Subsection ~~[26-44-203]~~ 59-14-603(1), is defined in the Master Settlement Agreement as follows:

"Participating Manufacturer" means a Tobacco Product Manufacturer that is or becomes a signatory to this Agreement, provided that (1) in the case of a Tobacco Product Manufacturer that is not an Original Participating Manufacturer, such Tobacco Product Manufacturer is bound by this Agreement and the Consent Decree, or, in any Settling State that does not permit amendment of the Consent Decree, a Consent Decree containing terms identical to those set forth in the Consent Decree, in all Settling States in which this Agreement and the Consent Decree binds Original Participating Manufacturers, provided, however, that such Tobacco Product Manufacturer need only

become bound by the Consent Decree in those Settling State in which the Settling State has filed a Released Claim against it, and (2) in the case of a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution Date, such Tobacco Product Manufacturer, within a reasonable period of time after signing this Agreement, makes any payments, including interest thereon at the Prime Rate, that it would have been obligated to make in the intervening period had it been a signatory as of the MSA Execution Date. "Participating Manufacturer" shall also include the successor of a Participating Manufacturer. Except as expressly provided in this Agreement, once an entity becomes a Participating Manufacturer such entity shall permanently retain the status of Participating Manufacturer. Each Participating Manufacturer shall regularly report its shipments of Cigarettes in or to the 50 United States, the District of Columbia and Puerto Rico to Management Science Associates, Inc., or a successor entity as set forth in subsection (mm). Solely for purposes of calculations pursuant to subsection IX(d), a Tobacco Product Manufacturer that is not a signatory to this Agreement shall be deemed to be a "Participating Manufacturer" if the Original Participating Manufacturers unanimously consent in writing.

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

Section 16. Section **59-14-708**, which is renumbered from Section 26-44-308 is renumbered and amended to read:

~~[26-44-308].~~                    **59-14-708. Payments by subsequent participating manufacturers.**

Section XI(i)(2) and IX(i)(3) of the Master Settlement Agreement, which are referenced in Subsection ~~[26-44-203]~~ 59-14-603(2)(b), involve payments by subsequent participating manufacturers and providers as follows:

(1) A Subsequent Participating Manufacturer shall have payment obligations under this Agreement only in the event that its Market Share in any calendar year exceeds the greater of (1) its 1998 Market Share or (2) 125% of its 1997 Market Share, subject to the provisions of subsection (i)(4). In the year following any such calendar year, such Subsequent Participating Manufacturer shall make payments corresponding to those due in that same following year from the Original Participating Manufacturers pursuant to subsections VI(c), except for the payment due on March 31, 1999, IX(c)(1), IX(c)(2) and IX(e). The amounts of such corresponding payments by a Subsequent

Participating Manufacturer are in addition to the corresponding payments that are due from the Original Participating Manufacturers and shall be determined as described in subsection (2) and (3) below. Such payments by a Subsequent Participating Manufacturer shall (A) be due on the same dates as the corresponding payments are due from Original Participating manufacturers; (B) be for the same purpose as such corresponding payments; and (C) be paid, allocated and distributed in the same manner as such corresponding payments.

(2) The base amount due from a Subsequent Participating Manufacturer on any given date shall be determined by multiplying (A) the corresponding base amount due on the same date from all of the Original Participating Manufacturers, as such base amount is specified in the corresponding subsection of this agreement and is adjusted by the Volume Adjustment, except for the provisions of subsection (B)(ii) of Exhibit E, but before such base amount is modified by any other adjustments, reductions or offsets, by (B) the quotient produced by dividing (i) the result of (x) such Subsequent Participating Manufacturer's Applicable Market Share, the applicable Market Share being that for the calendar year immediately preceding the year in which the payment in question is due, minus (y) the greater of (1) its 1998 Market Share or (2) 125% of its 1997 Market Share, by (ii) the aggregate Market Shares of the Original Participating Manufacturers, the applicable Market Shares being those for the calendar year immediately preceding the year in which the payment in question is due.

(3) Any payment due from a Subsequent Participating Manufacturer under subsections (1) and (2) above shall be subject, up to the full amount of such payment, to the Inflation Adjustment, the Nonsettling States Reduction, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8), to the extent that such adjustments, reductions or offsets would apply to the corresponding payment due from the Original Participating Manufacturers. Provided, however, that all adjustments and offsets to which a Subsequent Participating Manufacturer is entitled may only be applied against payments by such Subsequent Participating Manufacturer, if any, that are due within 12 months after the date on which the Subsequent Participating Manufacturer becomes entitled to such adjustment or makes the payment that entitles it to such offset, and shall not be carried forward beyond that time

even if not fully used.

(4) For purposes of this Subsection (i), the 1997, or 1998, as applicable, Market Share, and 125% thereof, of those Subsequent Participating Manufacturers that either (A) became a signatory to the Agreement more than 60 days after the MSA Execution Date or (B) had no Market Share in 1997, or 1998, as applicable, shall equal zero.

Section 17. Section **59-14-801** is enacted to read:

### **Part 8. Other Tobacco Settlement Provisions**

#### **59-14-801. Availability of master settlement agreement.**

The commission shall provide a copy of the Master Settlement Agreement for review or purchase to any person upon request and may charge a fee for doing so in accordance with Subsection 59-1-210(26).

Section 18. Section **63-2-206** is amended to read:

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

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

- (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
- (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
- (c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or
- (d) is one that collects information for presentence, probationary, or parole purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

governs the sharing of the record or record series.

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

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

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

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

~~[(a) except as provided under Section 59-1-403, records held by the State Tax Commission that pertain to any person and that are gathered under authority of Title 59, Revenue and Taxation;]~~

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

~~[(c)]~~ (b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

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