

**REVISIONS TO GENERAL GOVERNMENT -  
TOBACCO AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Hogue**

**This act amends provisions related to the Tax Code. This act amends provisions related to tobacco product manufacturer compliance with escrow payments and tobacco settlement agreements. The act amends confidentiality requirements, penalties for dealing with prohibited cigarettes, definition of contraband goods, and reporting of manufacturers names. The act prohibits stamping of products out of compliance with certification requirements.**

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

AMENDS:

**59-1-403**, as last amended by Chapters 262, 270 and 314, Laws of Utah 2001

**59-14-211**, as enacted by Chapter 190, Laws of Utah 2000

**59-14-213**, as enacted by Chapter 190, Laws of Utah 2000

**59-14-407**, as last amended by Chapter 229, Laws of Utah 2000

ENACTS:

**59-14-408**, Utah Code Annotated 1953

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

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

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

(1) (a) Except as provided in this section, any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) Except as provided in Subsection (1)(c), an official charged with the custody of a return

filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
  - (ii) on behalf of the commission in any action or proceeding under:
    - (A) this title; or
    - (B) other law under which persons are required to file returns with the commission;
  - (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or
  - (iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.
- (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.
- (2) This section does not prohibit:
- (a) a person or that person's 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 the statistics 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 a tax based on the 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, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:
- (i) the United States Internal Revenue Service; or

(ii) 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, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, 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, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, 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, as requested by the executive secretary, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by 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).

(g) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through [(†)](c) and Subsection 59-14-212(1)(g).

(h) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the committee or office.

(i) Notwithstanding Subsection (1), the commission shall at the request of the Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

(j) Notwithstanding Subsection (1), the commission shall make the list required by Subsection 59-14-408(3) available for public inspection.

(4) (a) Reports and returns shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person 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 2. Section **59-14-211** is amended to read:

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

(1) A person, regardless of whether the person is a licensee under Section 59-14-202, is guilty of a class B misdemeanor for each instance in which the person knowingly or with reason to know:

(a) sells or distributes cigarettes described under Section 59-14-210;

(b) acquires, holds, owns, possesses, transports, imports, or causes to be imported cigarettes:

(i) described under Section 59-14-210; and

(ii) intended for distribution or sale in the state;

(c) alters the package of any cigarettes prior to their sale or distribution to the ultimate consumer to remove, conceal, or obscure a notice, warning label, or other package information described in Subsection 59-14-210(1)(a); or

(d) affixes a stamp used to pay the tax imposed under Section 59-14-204, Part 3, Tobacco Products, or Part 4, Cigarettes and Tobacco Products, to a package or container of cigarettes:

(i) described under Section 59-14-210; [or]

(ii) known by the person affixing the stamp to be altered as described under Subsection (1)(c)[-]; or

(iii) in violation of Section 59-14-408.

(2) If a person knowingly or with reason to know commits an act described in Subsections (1)(a) through [(†)](d), the commission may:

(a) suspend or revoke a license issued to the person under Section 59-14-202; and

(b) regardless of whether the person is licensed under Section 59-14-202, impose a civil penalty in an amount not to exceed the greater of:

(i) 500% of the retail value of the cigarettes; or

(ii) \$5,000.

(3) Any person whose commercial interests have been adversely affected as a result of a violation of this section may bring an action for injunctive relief, damages, or both.

Section 3. Section **59-14-213** is amended to read:

**59-14-213. Contraband goods.**

(1) Any cigarettes in violation of Section 59-14-211 or not properly reported under

Subsection 59-14-212(1) are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.

(2) Any seized goods shall be delivered to the commission and destroyed.

(3) Any cigarettes, as defined in Subsection 59-22-202(4), in violation of Subsection 59-14-408(2) are contraband goods and may be seized in accordance with Subsections (1) and (2).

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 59-22-202.

(b) "Tobacco product manufacturer" has the same meaning as defined in Section 59-22-202.

(2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report 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 59-22-202 and manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report 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 **59-14-408** is enacted to read:

**59-14-408. Compliance certification -- Prohibition on stamping.**

(1) As used in this section:

(a) "cigarette" has the same meaning as defined in Section 59-22-202; and

(b) "tobacco product manufacturer" has the same meaning as defined in Section 59-22-202.

(2) No person may affix, or cause to be affixed, a stamp to an individual package or container of cigarettes under Section 59-14-205, or pay the tax levied under Part 3, Tobacco Products, if the tobacco product manufacturer is not included on the list published by the commission under Subsection (3).

(3) (a) The commission shall make available for public inspection a list of tobacco product manufacturers that have provided the certification required by Subsection (4) and the cigarette brands of those manufacturers sold for consumption in the state.

(b) The commission shall update the list as necessary.

(c) A person is not liable for a violation of Subsection (2) if the cigarette brand and manufacturer is included in the commission's list at the time the stamp is affixed or the tax paid.

(4) A tobacco product manufacturer shall certify to the commission under penalty of perjury, that:

(a) the manufacturer is:

(i) a participating manufacturer as defined in Subsection 59-22-203(1)(a); or

(ii) in full compliance with Subsection 59-22-203(1)(b);

(b) the list attached to the certification is a complete and updated list of all cigarette brands sold by the manufacturer for consumption in the state;

(c) the list will be updated as necessary; and

(d) all escrow payments required by Subsection 59-22-203(1)(b) have, to the best of the manufacturer's knowledge, been made by all other tobacco product manufacturers that previously made or sold the cigarette brands included in the manufacturer's list.

(5) Notwithstanding the requirement of Subsection (4)(d), if the tobacco product manufacturer did sell or manufacture the tobacco product that is the subject of the certification prior to March 1, 2002, the tobacco product manufacturer is only required to identify the predecessor tobacco product manufacturer.

(6) The commission may require licensees who affix stamps to individual packages or

containers of cigarettes under Section 59-14-205 or who pay the tax under Part 3, Tobacco Products, to submit information necessary to enable the commission to determine whether a tobacco product manufacturer is in compliance with Section 59-22-203.

(7) The commission may require each tobacco product manufacturer to appoint a registered agent for service of process in the state and identify the registered agent to the commission.

(8) A tobacco product manufacturer who falsely represents to any person any information specified in Subsection (4), or who fails to appoint the registered agent required by this section is guilty of a class B misdemeanor for each violation or false representation.