

Representative Paul Ray proposes the following substitute bill:

TOBACCO TAX INCREASE

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Cigarette and Tobacco Tax Act by increasing the tax rates on the sale, use, storage, or distribution of tobacco products in the state for the 2009-10 fiscal year and allowing the rates to fluctuate in subsequent fiscal years.

Highlighted Provisions:

This bill:

▶ increases the tax rate for the sale, use, storage, or distribution of tobacco products in the state, for the 2009-10 fiscal year, as follows:

- for cigarettes weighing not more than three pounds per thousand cigarettes, from 3.475 cents per cigarette to 6.55 cents per cigarette;
 - for cigarettes weighing in excess of three pounds per thousand cigarettes, from 4.075 cents per cigarette to 7.68 cents per cigarette;
 - for tobacco products, except moist snuff, from 35% to 66% of the manufacturer's sales price; and
 - for moist snuff, from \$.75 to \$1.41 per ounce;
- ▶ sets the tax rate for the sale, use, storage, or distribution of tobacco products in the state, for each year after the 2009-10 fiscal year, as follows:
- for cigarettes weighing not more than three pounds per thousand cigarettes, at



26 one-tenth of one cent above the national average rate, excluding certain tobacco producing
27 states;

28 • for cigarettes weighing in excess of three pounds per thousand cigarettes, at a
29 rate that is 1.173 times higher than the rate described in the preceding
30 paragraph;

31 • for tobacco products, except moist snuff, at a percentage rate that is modified by
32 the percentage change in the rate for cigarettes weighing not more than three
33 pounds per thousand cigarettes; and

34 • for moist snuff, at an amount that is modified by the percentage change
35 described in the preceding paragraph; and

36 ▶ makes technical changes.

37 **Monies Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 This bill takes effect on July 1, 2009.

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **59-14-204**, as last amended by Laws of Utah 2008, Chapter 382

44 **59-14-302**, as last amended by Laws of Utah 2008, Chapter 204

45 **63J-1-201**, as last amended by Laws of Utah 2008, Chapter 213 and renumbered and
46 amended by Laws of Utah 2008, Chapter 382



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

49 Section 1. Section **59-14-204** is amended to read:

50 **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**
51 **revenues.**

52 (1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax
53 upon the sale, use, storage, or distribution of cigarettes in the state.

54 (2) The rates of the tax levied under Subsection (1) are:

55 (a) beginning on July 1, 2009, and ending on June 30, 2010:

56 [~~(a) 3.475~~] (i) 6.55 cents on each cigarette, for all cigarettes weighing not more than

57 three pounds per thousand cigarettes; and

58 ~~[(b) 4.075]~~ (ii) 7.68 cents on each cigarette, for all cigarettes weighing in excess of
59 three pounds per thousand cigarettes~~[-]; and~~

60 (b) beginning on July 1 of each state fiscal year after the 2009-10 fiscal year, for all
61 cigarettes weighing not more than three pounds per thousand cigarettes, as calculated under
62 Subsection (3); and

63 (c) beginning on July 1 of each state fiscal year after the 2009-10 fiscal year, for all
64 cigarettes weighing in excess of three pounds per thousand cigarettes, calculated by:

65 (i) multiplying the rate that is calculated under Subsection (3) by 1.173; and

66 (ii) rounding the product of the calculation described in Subsection (2)(c)(i) to the
67 nearest thousandth of one cent.

68 (3) Beginning in, 2010, on or before April 1 of each year the tax commission shall
69 calculate the tax rate described in Subsection (2)(b) by:

70 (a) determining the sum of the state tax rates, as the rates were on January 1 of that
71 year, for the cigarettes described in Subsection (2)(b), for each state of the United States,
72 except Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia;

73 (b) dividing the sum described in Subsection (3)(a) by 44 and rounding the result to the
74 nearest thousandth of one cent; and

75 (c) adding one-tenth of one cent to the rounded amount described in Subsection (3)(b).

76 ~~[(3)]~~ (4) Except as otherwise provided under this chapter, the tax levied under
77 Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer,
78 distributor, wholesaler, retailer, user, or consumer.

79 ~~[(4)]~~ (5) The tax rates specified in this section shall be increased by the commission by
80 the same amount as any future reduction in the federal excise tax on cigarettes.

81 ~~[(5)]~~ (6) (a) There is created within the General Fund a restricted account known as the
82 "Cigarette Tax Restricted Account."

83 (b) Beginning on July 1, 1998, \$250,000 of the revenues generated by the increase in
84 the cigarette tax under this section enacted during the 1997 Annual General Session shall be
85 annually deposited into the account.

86 (c) The Department of Health shall expend the funds deposited in the account under
87 Subsection ~~[(5)]~~ (6)(b) for a tobacco prevention and control media campaign targeted towards

88 children.

89 (d) The following revenue generated from the tax increase imposed under Subsection
90 (1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted
91 Account:

92 (i) 22% of the revenue to be annually appropriated to the Department of Health for
93 tobacco prevention, reduction, cessation, and control programs;

94 (ii) 15% of the revenue to be annually appropriated to the University of Utah Health
95 Sciences Center for the Huntsman Cancer Institute for cancer research; and

96 (iii) 21% of the revenue to be annually appropriated to the University of Utah Health
97 Sciences Center for medical education at the University of Utah School of Medicine.

98 (e) Any balance remaining in the Cigarette Tax Restricted Account at the end of the
99 fiscal year shall be appropriated during the next fiscal year for the purposes set forth in
100 Subsections [~~5~~] (6)(d)(i) through [~~5~~] (6)(d)(iii) in proportion to the amount of revenue
101 deposited into the account for each purpose.

102 (f) The Legislature shall give particular consideration to appropriating any revenues
103 resulting from the change in tax rates under Subsection (2) adopted during the 2002 Annual
104 General Session and not otherwise appropriated pursuant to Subsection [~~5~~] (6)(d) to enhance
105 Medicaid provider reimbursement rates and medical coverage for the uninsured.

106 (g) Any program or entity that receives funding under Subsection [~~5~~] (6)(d) shall
107 provide an annual report to the Health and Human Services Interim Committee no later than
108 September 1 of each year. The report shall include:

109 (i) the amount funded;

110 (ii) the amount expended;

111 (iii) a description of the effectiveness of the program; and

112 (iv) if the program is a tobacco cessation program, the report required in Section
113 51-9-203.

114 Section 2. Section **59-14-302** is amended to read:

115 **59-14-302. Tax basis -- Rates.**

116 (1) As used in this section:

117 (a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco
118 product charges after subtracting a discount.

119 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
120 regardless of:

121 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

122 (ii) who pays the original Utah destination freight charge.

123 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.

124 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,
125 distributor, wholesaler, retailer, user, or consumer.

126 (4) The rate of the tax under this section is:

127 (a) beginning on July 1, 2009, and ending on June 30, 2010:

128 ~~[(a)]~~ (i) for tobacco products except for moist snuff, [35% of] .66, multiplied by the
129 manufacturer's sales price; [or] and

130 ~~[(b)]~~ (ii) subject to Subsection (5), for moist snuff, [\$.75] \$1.41 per ounce[-]; and

131 (b) beginning on July 1 of each state fiscal year after the 2009-10 fiscal year:

132 (i) for tobacco products, except moist snuff, an amount calculated by:

133 (A) dividing the rate calculated under Subsection 59-14-204(3) by the rate for all
134 cigarettes weighing not more than three pounds per thousand cigarettes, for the state fiscal year
135 that ended the day before July 1; and

136 (B) multiplying the result of the calculation described in Subsection (4)(b)(i)(A) by the
137 tax rate for tobacco products, except moist snuff, for the state fiscal year that ended the day
138 before July 1; and

139 (ii) for moist snuff, an amount equal to the per ounce tax rate for moist snuff, for the
140 fiscal year that ended the day before July 1, multiplied by the result of the calculation described
141 in Subsection (4)(b)(i)(A).

142 (5) (a) The tax under this section on moist snuff shall be imposed on the basis of the
143 net weight of the moist snuff as listed by the manufacturer.

144 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,
145 a proportionate amount of the tax described in Subsection (4)(b) is imposed:

146 (i) on that fractional part of one ounce; and

147 (ii) in accordance with rules made by the commission in accordance with Title 63G,
148 Chapter 3, Utah Administrative Rulemaking Act.

149 Section 3. Section **63J-1-201** is amended to read:

150 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**
151 **Appropriations based on current tax laws and not to exceed estimated revenues.**

152 (1) (a) The governor shall, within three days after the convening of the Legislature in
153 the annual general session, submit a budget for the ensuing fiscal year by delivering it to the
154 presiding officer of each house of the Legislature together with a schedule for all of the
155 proposed appropriations of the budget, clearly itemized and classified.

156 (b) The budget message shall include:

157 (i) a projection of estimated revenues and expenditures for the next fiscal year; and

158 (ii) the source of all direct, indirect, or in-kind matching funds for all federal grants or
159 assistance programs included in the budget.

160 (2) At least 34 days before the submission of any budget, the governor shall deliver a
161 confidential draft copy of the governor's proposed budget recommendations to the Office of the
162 Legislative Fiscal Analyst.

163 (3) (a) The budget shall contain a complete plan of proposed expenditures and
164 estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and
165 rates.

166 (b) The budget may be accompanied by a separate document showing proposed
167 expenditures and estimated revenues based on changes in state tax laws or rates.

168 (4) The budget shall be accompanied by a statement showing:

169 (a) the revenues and expenditures for the last fiscal year;

170 (b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and
171 funds of the state;

172 (c) an estimate of the state's financial condition as of the beginning and the end of the
173 period covered by the budget;

174 (d) a complete analysis of lease with an option to purchase arrangements entered into
175 by state agencies;

176 (e) the recommendations for each state agency for new full-time employees for the next
177 fiscal year; which recommendation should be provided also to the State Building Board under
178 Subsection 63A-5-103(2);

179 (f) any explanation the governor may desire to make as to the important features of the
180 budget and any suggestion as to methods for the reduction of expenditures or increase of the

181 state's revenue; and

182 (g) the information detailing certain regulatory fee increases required by Section
183 63J-1-303.

184 (5) The budget shall include an itemized estimate of the appropriations for:

185 (a) the Legislative Department as certified to the governor by the president of the
186 Senate and the speaker of the House;

187 (b) the Executive Department;

188 (c) the Judicial Department as certified to the governor by the state court administrator;

189 (d) payment and discharge of the principal and interest of the indebtedness of the state;

190 (e) the salaries payable by the state under the Utah Constitution or under law for the
191 lease agreements planned for the next fiscal year;

192 (f) other purposes that are set forth in the Utah Constitution or under law; and

193 (g) all other appropriations.

194 (6) Deficits or anticipated deficits shall be included in the budget.

195 (7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall
196 require from the proper state officials, including public and higher education officials, all heads
197 of executive and administrative departments and state institutions, bureaus, boards,
198 commissions, and agencies expending or supervising the expenditure of the state moneys, and
199 all institutions applying for state moneys and appropriations, itemized estimates of revenues
200 and expenditures.

201 (ii) (A) The governor may also require other information under these guidelines and at
202 times as the governor may direct.

203 (B) These guidelines may include a requirement for program productivity and
204 performance measures, where appropriate, with emphasis on outcome indicators.

205 (b) The estimate for the Legislative Department as certified by the presiding officers of
206 both houses shall be included in the budget without revision by the governor.

207 (c) The estimate for the Judicial Department, as certified by the state court
208 administrator, shall also be included in the budget without revision, but the governor may make
209 separate recommendations on it.

210 (d) The governor may require the attendance at budget meetings of representatives of
211 public and higher education, state departments and institutions, and other institutions or

212 individuals applying for state appropriations.

213 (e) The governor may revise all estimates, except those relating to the Legislative
214 Department, the Judicial Department, and those providing for the payment of principal and
215 interest to the state debt and for the salaries and expenditures specified by the Utah
216 Constitution or under the laws of the state.

217 (8) The total appropriations requested for expenditures authorized by the budget may
218 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing
219 fiscal year.

220 (9) If any item of the budget as enacted is held invalid upon any ground, the invalidity
221 does not affect the budget itself or any other item in it.

222 (10) (a) In submitting the budgets for the Departments of Health and Human Services
223 and the Office of the Attorney General, the governor shall consider a separate recommendation
224 in the governor's budget for funds to be contracted to:

225 (i) local mental health authorities under Section 62A-15-110;

226 (ii) local substance abuse authorities under Section 62A-15-110;

227 (iii) area agencies under Section 62A-3-104.2;

228 (iv) programs administered directly by and for operation of the Divisions of Substance
229 Abuse and Mental Health and Aging and Adult Services;

230 (v) local health departments under Title 26A, Chapter 1, Local Health Departments;
231 and

232 (vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

233 (b) In the governor's budget recommendations under Subsections (10)(a)(i), (ii), and
234 (iii), the governor shall consider an amount sufficient to grant local health departments, local
235 mental health authorities, local substance abuse authorities, and area agencies the same
236 percentage increase for wages and benefits that the governor includes in the governor's budget
237 for persons employed by the state.

238 (c) If the governor does not include in the governor's budget an amount sufficient to
239 grant the increase described in Subsection (10)(b), the governor shall include a message to the
240 Legislature regarding the governor's reason for not including that amount.

241 (11) (a) In submitting the budget for the Department of Agriculture, the governor shall
242 consider an amount sufficient to grant local conservation districts and Utah Association of

243 Conservation District employees the same percentage increase for wages and benefits that the
244 governor includes in the governor's budget for persons employed by the state.

245 (b) If the governor does not include in the governor's budget an amount sufficient to
246 grant the increase described in Subsection (11)(a), the governor shall include a message to the
247 Legislature regarding the governor's reason for not including that amount.

248 (12) (a) In submitting the budget for the Utah State Office of Rehabilitation and the
249 Division of Services for People with Disabilities, the Division of Child and Family Services,
250 and the Division of Juvenile Justice Services within the Department of Human Services, the
251 governor shall consider an amount sufficient to grant employees of corporations that provide
252 direct services under contract with those divisions, the same percentage increase for
253 cost-of-living that the governor includes in the governor's budget for persons employed by the
254 state.

255 (b) If the governor does not include in the governor's budget an amount sufficient to
256 grant the increase described in Subsection (12)(a), the governor shall include a message to the
257 Legislature regarding the governor's reason for not including that amount.

258 (13) (a) The Families, Agencies, and Communities Together Council may propose to
259 the governor under Subsection 63M-9-201(4)(e) a budget recommendation for collaborative
260 service delivery systems operated under Section 63M-9-402.

261 (b) The Legislature may, through a specific program schedule, designate funds
262 appropriated for collaborative service delivery systems operated under Section 63M-9-402.

263 (14) The governor shall include in the governor's budget the state's portion of the
264 budget for the Utah Communications Agency Network established in Title 63C, Chapter 7,
265 Utah Communications Agency Network Act.

266 (15) (a) The governor shall include a separate recommendation in the governor's
267 budget for funds to maintain the operation and administration of the Utah Comprehensive
268 Health Insurance Pool.

269 (b) In making the recommendation the governor may consider:

270 (i) actuarial analysis of growth or decline in enrollment projected over a period of at
271 least three years;

272 (ii) actuarial analysis of the medical and pharmacy claims costs projected over a period
273 of at least three years;

- 274 (iii) the annual Medical Care Consumer Price Index;
- 275 (iv) the annual base budget for the pool established by the Commerce and Revenue
- 276 Appropriations Subcommittee for each fiscal year;
- 277 (v) the growth or decline in insurance premium taxes and fees collected by the tax
- 278 commission and the insurance department; and
- 279 (vi) the availability of surplus General Fund revenue under Section 63J-1-202 and
- 280 Subsection 59-14-204[~~(5)~~] (6)(b).

281 (16) In adopting a budget for each fiscal year, the Legislature shall consider an amount

282 sufficient to grant local health departments, local mental health authorities, local substance

283 abuse authorities, area agencies on aging, conservation districts, and Utah Association of

284 Conservation District employees the same percentage increase for wages and benefits that is

285 included in the budget for persons employed by the state.

286 (17) (a) In adopting a budget each year for the Utah Comprehensive Health Insurance

287 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each

288 fiscal year.

289 (b) When making a determination under Subsection (17)(a), the Legislature shall

290 consider factors it determines are appropriate, which may include:

291 (i) actuarial analysis of growth or decline in enrollment projected over a period of at

292 least three years;

293 (ii) actuarial analysis of the medical and pharmacy claims costs projected over a period

294 of at least three years;

295 (iii) the annual Medical Care Consumer Price Index;

296 (iv) the annual base budget for the pool established by the Commerce and Revenue

297 Appropriations Subcommittee for each fiscal year;

298 (v) the growth or decline in insurance premium taxes and fees collected by the tax

299 commission and the insurance department from the previous fiscal year; and

300 (vi) the availability of surplus General Fund revenue under Section 63J-1-202 and

301 Subsection 59-14-204[~~(5)~~] (6)(b).

302 (c) The funds appropriated by the Legislature to fund the Utah Comprehensive Health

303 Insurance Pool as determined under Subsection (17)(a):

304 (i) shall be deposited into the enterprise fund established by Section 31A-29-120; and

305 (ii) are restricted and are to be used to maintain the operation, administration, and
306 management of the Utah Comprehensive Health Insurance Pool created by Section
307 31A-29-104.

308 (18) In considering the factors in Subsections (15)(b)(i), (ii), and (iii) and Subsections
309 (17)(b)(i), (ii), and (iii), the governor and the Legislature may consider the actuarial data and
310 projections prepared for the board of the Utah Comprehensive Health Insurance Pool as it
311 develops its financial statements and projections for each fiscal year.

312 (19) The governor shall report, for each line item, the average annual dollar amount of
313 staff funding associated with all positions that were vacant during the last fiscal year.

314 Section 4. **Effective date.**

315 This bill takes effect on July 1, 2009.

H.B. 219 1st Sub. (Buff) - Tobacco Tax Increase

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill increases the tax on cigarettes, moist snuff, and other tobacco products. This increases revenue to the General Fund by \$25,900,000 in FY 2010. Each year the Economic and Statistical Unit of the Utah State Tax Commission will calculate the new tax rate based upon the average tax rate in 44 states and multiplied by a constant. Absent tax changes in other states, this bill increases revenue in FY 2011 by \$30,600,000 in that the tax changes in FY 2010 increase the national average.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$25,900,000	\$30,600,000
Total	\$0	\$0	\$0	\$0	\$25,900,000	\$30,600,000

Individual, Business and/or Local Impact

Local government sales tax revenue will increase by a total of \$26,000 in FY 2010 and \$31,000 in FY 2011. Businesses dealing in tobacco products will experience a decrease in revenue. Individuals will see the average price per pack increase to the national average in FY 2010. In FY 2011, individuals will see the price per pack increase or decrease depending upon the cigarette tax policy in other states.