

**TOBACCO TAX AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill increases the tax on tobacco products.

**Highlighted Provisions:**

This bill:

- ▶ increases the tax on cigarettes, moist snuff, and other tobacco products;
- ▶ eliminates the Cigarette Tax Restricted Account;
- ▶ creates the Cigarette and Tobacco Products Tax Restricted Account;
- ▶ provides for deposits to the account;
- ▶ allocates \$10,500,000 from the account for various programs; and
- ▶ restricts the use of remaining account monies for health-related programs, subject to

legislative appropriation.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect July 1, 2009.

**Utah Code Sections Affected:**

AMENDS:

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

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

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



28 amended by Laws of Utah 2008, Chapter 382

29 ENACTS:

30 **59-14-701**, Utah Code Annotated 1953



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

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

33 **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**  
34 **revenues.**

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

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

38 (a) ~~[3.475]~~ 10 cents on each cigarette, for all cigarettes weighing not more than three  
39 pounds per thousand cigarettes; and

40 (b) ~~[4.075]~~ 11.725 cents on each cigarette, for all cigarettes weighing in excess of three  
41 pounds per thousand cigarettes.

42 (3) Except as otherwise provided under this chapter, the tax levied under Subsection  
43 (1) shall be paid by any person who is the manufacturer, jobber, importer, distributor,  
44 wholesaler, retailer, user, or consumer.

45 (4) The tax rates specified in this section shall be increased by the commission by the  
46 same amount as any future reduction in the federal excise tax on cigarettes.

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

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

52 ~~[(c) The Department of Health shall expend the funds deposited in the account under~~  
53 ~~Subsection (5)(b) for a tobacco prevention and control media campaign targeted towards~~  
54 ~~children.]~~

55 ~~[(d) The following revenue generated from the tax increase imposed under Subsection~~  
56 ~~(1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted~~  
57 ~~Account.]~~

59           ~~[(i) 22% of the revenue to be annually appropriated to the Department of Health for~~  
60 ~~tobacco prevention, reduction, cessation, and control programs;]~~

61           ~~[(ii) 15% of the revenue to be annually appropriated to the University of Utah Health~~  
62 ~~Sciences Center for the Huntsman Cancer Institute for cancer research; and]~~

63           ~~[(iii) 21% of the revenue to be annually appropriated to the University of Utah Health~~  
64 ~~Sciences Center for medical education at the University of Utah School of Medicine.]~~

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

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

73           ~~[(g) Any program or entity that receives funding under Subsection (5)(d) shall provide~~  
74 ~~an annual report to the Health and Human Services Interim Committee no later than September~~  
75 ~~1 of each year. The report shall include:]~~

76           ~~[(i) the amount funded;]~~

77           ~~[(ii) the amount expended;]~~

78           ~~[(iii) a description of the effectiveness of the program; and]~~

79           ~~[(iv) if the program is a tobacco cessation program, the report required in Section~~  
80 ~~51-9-203.]~~

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

82           **59-14-302. Tax basis -- Rates.**

83           (1) As used in this section:

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

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

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

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

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

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

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

94 (a) for tobacco products except for moist snuff, [~~35%~~] 88% of the manufacturer's sales  
95 price; or

96 (b) subject to Subsection (5), for moist snuff, [~~\$.75~~] \$2.15 per ounce.

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

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

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

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

104 Section 3. Section **59-14-701** is enacted to read:

105 **Part 7. Cigarette and Tobacco Tax Restricted Account**

106 **59-14-701. Cigarette and Tobacco Tax Restricted Account.**

107 (1) There is created within the General Fund a restricted account known as the  
108 "Cigarette and Tobacco Products Tax Restricted Account."

109 (2) The Cigarette and Tobacco Products Tax Restricted Account shall consist of:

110 (a) private contributions;

111 (b) legislative appropriations; and

112 (c) revenue generated under the cigarette tax and the tobacco products tax, as specified  
113 in Subsection (4).

114 (3) (a) The state treasurer shall invest monies in the account according to Title 51,  
115 Chapter 7, State Money Management Act.

116 (b) The Division of Finance shall deposit interest or other earnings derived from  
117 investment of account monies into the General Fund.

118 (4) (a) The Division of Finance shall annually deposit into the account:

119 (i) \$56,975,000 of the revenues generated by the cigarette tax imposed under Section  
120 59-14-204; and

121 (ii) \$5,400,000 of the revenues generated by the tobacco products tax under Section  
122 59-14-302.

123 (b) If the revenues generated under Sections 59-14-204 and 59-14-302 are less than the  
124 amounts to be deposited under Subsection (4)(a), the Division of Finance shall deposit into the  
125 account the actual amount of revenues generated under Sections 59-14-204 and 59-14-302.

126 (5) (a) The Division of Finance shall annually allocate funds from the account as  
127 follows:

128 (i) \$2,500,000 to the Department of Health for prevention, reduction, cessation, and  
129 control programs;

130 (ii) \$4,400,000 to the University of Utah Health Sciences Center for the Huntsman  
131 Cancer Institute for cancer research; and

132 (iii) \$3,600,000 to the University of Utah Health Sciences Center for medical education  
133 at the University of Utah School of Medicine.

134 (b) When the Legislature appropriates funds from the account in addition to the  
135 allocations under Subsection (5)(a), the funds may only be used for health-related programs, as  
136 specified in the appropriation.

137 (c) If cigarette and tobacco product tax revenues deposited into the account under  
138 Subsection (4) are less than the total amount to be allocated under Subsections (5)(a) and (b),  
139 the allocation amounts under Subsections (5)(a) and (b) shall be reduced by an equal  
140 percentage to match the amounts deposited pursuant to Subsection (4).

141 Section 4. Section **63J-1-201** is amended to read:

142 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**  
143 **Appropriations based on current tax laws and not to exceed estimated revenues.**

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

148 (b) The budget message shall include:

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

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

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

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

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

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

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

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

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

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

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

171 (f) any explanation the governor may desire to make as to the important features of the  
172 budget and any suggestion as to methods for the reduction of expenditures or increase of the  
173 state's revenue; and

174 (g) the information detailing certain regulatory fee increases required by Section  
175 63J-1-303.

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

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

179 (b) the Executive Department;

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

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

182 (e) the salaries payable by the state under the Utah Constitution or under law for the

183 lease agreements planned for the next fiscal year;

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

185 (g) all other appropriations.

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

187 (7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall

188 require from the proper state officials, including public and higher education officials, all heads

189 of executive and administrative departments and state institutions, bureaus, boards,

190 commissions, and agencies expending or supervising the expenditure of the state moneys, and

191 all institutions applying for state moneys and appropriations, itemized estimates of revenues

192 and expenditures.

193 (ii) (A) The governor may also require other information under these guidelines and at

194 times as the governor may direct.

195 (B) These guidelines may include a requirement for program productivity and

196 performance measures, where appropriate, with emphasis on outcome indicators.

197 (b) The estimate for the Legislative Department as certified by the presiding officers of

198 both houses shall be included in the budget without revision by the governor.

199 (c) The estimate for the Judicial Department, as certified by the state court

200 administrator, shall also be included in the budget without revision, but the governor may make

201 separate recommendations on it.

202 (d) The governor may require the attendance at budget meetings of representatives of

203 public and higher education, state departments and institutions, and other institutions or

204 individuals applying for state appropriations.

205 (e) The governor may revise all estimates, except those relating to the Legislative

206 Department, the Judicial Department, and those providing for the payment of principal and

207 interest to the state debt and for the salaries and expenditures specified by the Utah

208 Constitution or under the laws of the state.

209 (8) The total appropriations requested for expenditures authorized by the budget may

210 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing

211 fiscal year.

212 (9) If any item of the budget as enacted is held invalid upon any ground, the invalidity

213 does not affect the budget itself or any other item in it.

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

- 217 (i) local mental health authorities under Section 62A-15-110;
- 218 (ii) local substance abuse authorities under Section 62A-15-110;
- 219 (iii) area agencies under Section 62A-3-104.2;
- 220 (iv) programs administered directly by and for operation of the Divisions of Substance  
221 Abuse and Mental Health and Aging and Adult Services;
- 222 (v) local health departments under Title 26A, Chapter 1, Local Health Departments;
- 223 and

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

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

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

233 (11) (a) In submitting the budget for the Department of Agriculture, the governor shall  
234 consider an amount sufficient to grant local conservation districts and Utah Association of  
235 Conservation District employees the same percentage increase for wages and benefits that the  
236 governor includes in the governor's budget for persons employed by the state.

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

240 (12) (a) In submitting the budget for the Utah State Office of Rehabilitation and the  
241 Division of Services for People with Disabilities, the Division of Child and Family Services,  
242 and the Division of Juvenile Justice Services within the Department of Human Services, the  
243 governor shall consider an amount sufficient to grant employees of corporations that provide  
244 direct services under contract with those divisions, the same percentage increase for

245 cost-of-living that the governor includes in the governor's budget for persons employed by the  
246 state.

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

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

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

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

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

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

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

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

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

267 (iv) the annual base budget for the pool established by the Commerce and Revenue  
268 Appropriations Subcommittee for each fiscal year;

269 (v) the growth or decline in insurance premium taxes and fees collected by the tax  
270 commission and the insurance department; and

271 (vi) the availability of surplus General Fund revenue under Section 63J-1-202 and  
272 Subsection 59-14-204(5)(b).

273 (16) In adopting a budget for each fiscal year, the Legislature shall consider an amount  
274 sufficient to grant local health departments, local mental health authorities, local substance  
275 abuse authorities, area agencies on aging, conservation districts, and Utah Association of

276 Conservation District employees the same percentage increase for wages and benefits that is  
277 included in the budget for persons employed by the state.

278 (17) (a) In adopting a budget each year for the Utah Comprehensive Health Insurance  
279 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each  
280 fiscal year.

281 (b) When making a determination under Subsection (17)(a), the Legislature shall  
282 consider factors it determines are appropriate, which may include:

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

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

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

288 (iv) the annual base budget for the pool established by the Commerce and Revenue  
289 Appropriations Subcommittee for each fiscal year;

290 (v) the growth or decline in insurance premium taxes and fees collected by the tax  
291 commission and the insurance department from the previous fiscal year; and

292 (vi) the availability of surplus General Fund revenue under Section 63J-1-202 [~~and~~  
293 ~~Subsection 59-14-204(5)(b)~~].

294 (c) The funds appropriated by the Legislature to fund the Utah Comprehensive Health  
295 Insurance Pool as determined under Subsection (17)(a):

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

297 (ii) are restricted and are to be used to maintain the operation, administration, and  
298 management of the Utah Comprehensive Health Insurance Pool created by Section  
299 31A-29-104.

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

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

306 Section 5. **Effective date.**

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This bill takes effect July 1, 2009.

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**Legislative Review Note**  
as of 1-23-09 10:04 AM

**Office of Legislative Research and General Counsel**