

**TOBACCO PRODUCTS AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Christopher N. Herrod

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**LONG TITLE**

**General Description:**

This bill amends the Cigarette and Tobacco Tax and Licensing chapter to address the taxation of little cigars.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ adjusts the tobacco products tax rate on little cigars; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2011.

**Utah Code Sections Affected:**

AMENDS:

**59-14-102**, as last amended by Laws of Utah 2010, Chapter 115

**59-14-302**, as last amended by Laws of Utah 2010, Chapters 115, 415 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 407

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

Section 1. Section **59-14-102** is amended to read:



28 **59-14-102. Definitions.**

29 As used in this chapter:

30 (1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

31 (a) regardless of:

32 (i) the size of the roll;

33 (ii) the shape of the roll; or

34 (iii) whether the tobacco is:

35 (A) flavored;

36 (B) adulterated; or

37 (C) mixed with any other ingredient; and

38 (b) if the wrapper or cover of the roll is made of paper or any other substance or  
39 material except tobacco.

40 (2) "Consumer" means a person that is not required:

41 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or

42 (b) under Section 59-14-301 to obtain a license under Section 59-14-202.

43 (3) "Counterfeit cigarette" means:

44 (a) a cigarette that has a false manufacturing label; or

45 (b) a package of cigarettes bearing a counterfeit tax stamp.

46 (4) "Importer" means a person who imports into the United States, either directly or  
47 indirectly, a finished cigarette for sale or distribution.

48 (5) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any  
49 other person doing business as a distributor or retailer of cigarettes on tribal lands located in the  
50 state.

51 (6) "Little cigar" means a roll for smoking:

52 (a) made wholly or in part of tobacco;

53 (b) that uses an integrated cellulose acetate filter or other similar filter; and

54 (c) that is wrapped in a substance:

55 (i) containing tobacco; and

56 (ii) that is not exclusively natural leaf tobacco.

57 [~~6~~] (7) "Manufacturer" means a person who manufactures, fabricates, assembles,  
58 processes, or labels a finished cigarette.

59            [~~(7)~~] (8) "Moist snuff" means tobacco that:

60            (a) is finely:

61            (i) cut;

62            (ii) ground; or

63            (iii) powdered;

64            (b) has at least 45% moisture content, as determined by the commission by rule made  
65 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

66            (c) is not intended to be:

67            (i) smoked; or

68            (ii) placed in the nasal cavity; and

69            (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or  
70 distributed in single-use units, including:

71            (i) tablets;

72            (ii) lozenges;

73            (iii) strips;

74            (iv) sticks; or

75            (v) packages containing multiple single-use units.

76            [~~(8)~~] (9) "Retailer" means a person that:

77            (a) sells or distributes a cigarette to a consumer in the state; or

78            (b) intends to sell or distribute a cigarette to a consumer in the state.

79            [~~(9)~~] (10) "Stamp" means the indicia required to be placed on a cigarette package that  
80 evidences payment of the tax on cigarettes required by Section 59-14-205.

81            [~~(10)~~] (11) (a) "Tobacco product" means a product made of, or containing, tobacco.

82            (b) "Tobacco product" includes:

83            (i) a little cigar; or

84            (ii) moist snuff.

85            (c) "Tobacco product" does not include a cigarette.

86            [~~(11)~~] (12) "Tribal lands" means land held by the United States in trust for a federally  
87 recognized Indian tribe.

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

89            **59-14-302. Tax basis -- Rates.**

90 (1) As used in this section:

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

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

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

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

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

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

100 [~~(4) The rate of the tax under this section is, beginning on July 1, 2010:~~]

101 [~~(a) for~~] (4) For tobacco products except for moist snuff[;] or a little cigar, the rate of  
102 the tax under this section is .86 multiplied by the manufacturer's sales price[; and].

103 [~~(b) subject to Subsection (5), for moist snuff, \$1.83 per ounce:~~]

104 (5) (a) [~~The~~] Subject to Subsection (5)(b), the tax under this section on moist snuff  
105 [shall be] is imposed:

106 (i) at a rate of \$1.83 per ounce; and

107 (ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

108 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,  
109 a proportionate amount of the tax described in Subsection [~~(4)(b)~~] (5)(a) is imposed:

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

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

113 (6) A little cigar is taxed in the same manner as a cigarette is taxed under Subsection  
114 59-14-204(2).

115 [~~(6)~~] (7) (a) Moisture content of a tobacco product is determined at the time of  
116 packaging.

117 (b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

118 (i) for a period of three years after the last day on which the manufacturer distributes  
119 the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of  
120 the tobacco product available for review by the commission, upon demand; and

121 (ii) provide a document, to the person described in Subsection (3) to whom the  
122 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco  
123 product, as verified by the scientific evidence described in Subsection [~~(6)~~] (7)(b)(i).

124 (c) A manufacturer who fails to comply with the requirements of Subsection [~~(6)~~]  
125 (7)(b) is liable for the nonpayment or underpayment of taxes on the tobacco product by a  
126 person who relies, in good faith, on the document described in Subsection [~~(6)~~] (7)(b)(ii).

127 (d) A person described in Subsection (3) who is required to pay tax on a tobacco  
128 product:

129 (i) shall, for a period of three years after the last day on which the person pays the tax  
130 on the tobacco product, keep the document described in Subsection [~~(6)~~] (7)(b)(ii) available for  
131 review by the commission, upon demand; and

132 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due  
133 to the person's good faith reliance on the document described in Subsection [~~(6)~~] (7)(b)(ii).

134 Section 3. **Effective date.**

135 This bill takes effect on July 1, 2011.

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**Legislative Review Note**  
as of 2-15-11 3:18 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

S.B. 262

SHORT TITLE: Tobacco Products Amendments

SPONSOR: Bramble, C.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

By increasing the tax on certain tobacco related products, enactment of this bill increases one-time revenue to the General Fund by \$177,600 in FY 2012 and decreases ongoing revenue to the General Fund by \$45,300 in FY 2013. Because sales tax is linked to tobacco sales, enactment of this bill decreases revenue to the General Fund by \$16,600 in FY 2012 and \$46,600 in FY 2013.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
<b>Revenue:</b>			
General Fund	\$0	(\$46,600)	(\$46,600)
General Fund	\$0	(\$45,300)	(\$45,300)
General Fund, One-Time	\$0	\$30,000	\$0
General Fund, One-Time	\$0	\$177,600	\$0
Total Revenue	\$0	\$115,700	(\$91,900)
<b>Expenditure</b>			
	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$115,700	(\$91,900)
Net Impact, General/Education Funds	\$0	\$115,700	(\$91,900)

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill decreases sales tax revenue to local governments by \$7,000 in FY 2012 and \$19,800 in FY 2013.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

About 52,700 individuals purchasing certain tobacco related products will see a tax increase of 6.9%, or \$6.12 per year. Businesses dealing in certain tobacco related products could see a decrease in revenue of \$364,500 in FY 2012 and \$708,900 in FY 2013.