

1 **TOBACCO MANUFACTURERS**
2 **RESPONSIBILITY ACT AMENDMENTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Karen W. Morgan**

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

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

13 AMENDS:

14 **26-1-30**, as last amended by Chapter 364, Laws of Utah 1999

15 **59-1-403**, as last amended by Chapter 364, Laws of Utah 1999

16 **59-14-401**, as last amended by Chapter 364, Laws of Utah 1999

17 **59-14-407**, as enacted by Chapter 364, Laws of Utah 1999

18 **63-2-206**, as last amended by Chapter 364, Laws of Utah 1999

19 ENACTS:

20 **59-14-801**, Utah Code Annotated 1953

21 RENUMBERS AND AMENDS:

22 **59-14-600**, (Renumbered from 26-44-101, as enacted by Chapter 344, Laws of Utah 1999)

23 **59-14-601**, (Renumbered from 26-44-201, as enacted by Chapter 344, Laws of Utah 1999)

24 **59-14-602**, (Renumbered from 26-44-202, as enacted by Chapter 344, Laws of Utah 1999)

25 **59-14-603**, (Renumbered from 26-44-203, as enacted by Chapter 344, Laws of Utah 1999)

26 **59-14-701**, (Renumbered from 26-44-301, as enacted by Chapter 364, Laws of Utah 1999)

27 **59-14-702**, (Renumbered from 26-44-302, as enacted by Chapter 364, Laws of Utah 1999)

- 28 **59-14-703**, (Renumbered from 26-44-303, as enacted by Chapter 364, Laws of Utah 1999)
- 29 **59-14-704**, (Renumbered from 26-44-304, as enacted by Chapter 364, Laws of Utah 1999)
- 30 **59-14-705**, (Renumbered from 26-44-305, as enacted by Chapter 364, Laws of Utah 1999)
- 31 **59-14-706**, (Renumbered from 26-44-306, as enacted by Chapter 364, Laws of Utah 1999)
- 32 **59-14-707**, (Renumbered from 26-44-307, as enacted by Chapter 364, Laws of Utah 1999)
- 33 **59-14-708**, (Renumbered from 26-44-308, as enacted by Chapter 364, Laws of Utah 1999)

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

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

36 **26-1-30. Powers and duties of department.**

37 (1) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94 (s) establish qualifications for individuals permitted to draw blood pursuant to Section
95 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated
96 or revoked by the department;

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

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

103 (i) orphanages;

104 (ii) boarding homes;

105 (iii) summer camps for children;

106 (iv) lodging houses;

107 (v) hotels;

108 (vi) restaurants and all other places where food is handled for commercial purposes, sold,
109 or served to the public;

110 (vii) tourist and trailer camps;

111 (viii) service stations;

112 (ix) public conveyances and stations;

113 (x) public and private schools;

114 (xi) factories;

115 (xii) private sanatoria;

116 (xiii) barber shops;

117 (xiv) beauty shops;

118 (xv) physicians' offices;

119 (xvi) dentists' offices;

120 (xvii) workshops;

- 121 (xviii) industrial, labor, or construction camps;
- 122 (xix) recreational resorts and camps;
- 123 (xx) swimming pools, public baths, and bathing beaches;
- 124 (xxi) state, county, or municipal institutions, including hospitals and other buildings,
125 centers, and places used for public gatherings; and
- 126 (xxii) of any other facilities in public buildings and on public grounds;
- 127 (v) conduct health planning for the state;
- 128 (w) monitor the costs of health care in the state and foster price competition in the health
129 care delivery system;
- 130 (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26,
131 Chapter 21, Health Care Facility Licensing and Inspection Act;
- 132 (y) serve as the collecting agent, on behalf of the state, for the nursing facility assessment
133 fee imposed under Title 26, Chapter 35, Nursing Facility Assessment Act, and the provider
134 assessment imposed under Chapter 40, Utah Children's Health Insurance Act, and adopt rules for
135 the enforcement and administration of the assessments consistent with Chapters 35 and 40;
- 136 (z) monitor and report to the Health Policy Commission created in Title 63C, Chapter 3,
137 Health Policy Commission, on the development of managed health care plans in rural areas of the
138 state, including the effect of the managed health care plans on costs, access, and availability of
139 providers located in the rural communities of the state; and
- 140 (aa) license the provision of child care[;];
- 141 [~~(bb) provide a copy of the Master Settlement Agreement for review or purchase to any~~
142 ~~person upon request and may charge a fee, established in accordance with Section 26-1-6, to any~~
143 ~~person who desires to purchase a copy of the Master Settlement Agreement; and]~~
- 144 [~~(cc) upon request from a tobacco product manufacturer, as defined in Section 26-44-202,~~
145 ~~report to the manufacturer the quantities of the manufacturer's cigarettes reported to the department~~
146 ~~under Section 59-1-403.]~~

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

148 **59-1-403. Confidentiality -- Penalty -- Application to property tax.**

- 149 (1) Any tax commissioner, agent, clerk, or other officer or employee of the commission
150 or any representative, agent, clerk, or other officer or employee of any county, city, or town may
151 not divulge or make known in any manner any information gained by him from any return filed

152 with the commission. The officials charged with the custody of such returns are not required to
153 produce any of them or evidence of anything contained in them in any action or proceeding in any
154 court, except:

155 (a) in accordance with judicial order;

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

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

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

164 (2) This section does not prohibit:

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

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

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

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

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

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

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

178 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
179 corporate franchise tax, the commission may, by rule, share information gathered from returns and
180 other written statements with the federal government, any other state, any of their political
181 subdivisions, or any political subdivision of this state, except as limited by Sections 59-12-209 and
182 59-12-210, if these political subdivisions or the federal government grant substantially similar

183 privileges to this state.

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

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

193 (e) ~~[(f)]~~ Notwithstanding Subsection (1), ~~[to provide information necessary for the~~
194 ~~implementation of Title 26, Chapter 44, Tobacco Manufacturers Responsibility Act, the~~
195 ~~commission shall annually report to the executive director of the Department of Health on or~~
196 ~~before March 1] upon request from a tobacco product manufacturer, as defined in Section~~
197 59-14-602, the commission shall report to the manufacturer:

198 ~~[(A)]~~ (i) the quantity of cigarettes, as defined in Section ~~[26-44-202]~~ 59-14-602, produced
199 by ~~[each]~~ the manufacturer and reported to the commission for the previous calendar year under
200 Section 59-14-407; and

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

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

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

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

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

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

214 **59-14-401. Refund of taxes paid -- Exemption for exported cigarettes and tobacco**
215 **products.**

216 (1) (a) When any cigarette or tobacco product taxed under this chapter is sold and shipped
217 to a regular dealer in those articles in another state, the seller in this state shall be entitled to a
218 refund of the actual amount of the taxes paid, upon condition that the seller in this state:

219 (i) is a licensed dealer;

220 (ii) signs an affidavit that the cigarette or tobacco product was so sold and shipped;

221 (iii) furnishes from the purchaser a written acknowledgment that the purchaser has
222 received:

223 (A) the cigarette or tobacco product; and

224 (B) the amount of any stamps for which a refund is requested;

225 (iv) reports the name and address of the purchaser; and

226 (v) reports the name of the manufacturer of the cigarette, as defined under Section
227 [~~26-44-202~~] 59-14-602, reported under Section 59-14-407 if the cigarette is manufactured by a
228 manufacturer required to place funds into escrow under Section [~~26-44-203~~] 59-14-603.

229 (b) The taxes shall be refunded in the manner provided in Subsection 59-14-206(2) for
230 unused stamps.

231 (2) Wholesalers or distributors in this state who export taxable cigarettes and tobacco
232 products to a regular dealer in another state shall be exempt from the payment of any tax upon the
233 sale of the articles upon furnishing such proof of the sale and exportation as the commission may
234 require.

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

236 **59-14-407. Reporting of manufacturer name.**

237 (1) As used in this section:

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

239 (b) "Tobacco product manufacturer" has the same meaning as defined in Section
240 [~~26-44-202~~] 59-14-602.

241 (2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section
242 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured by a
243 tobacco product manufacturer required to place funds into escrow under Section [~~26-44-203~~]
244 59-14-603 shall report annually to the commission:

245 (a) the quantity of cigarettes in the package or container; and

246 (b) the name of the manufacturer of the cigarettes.

247 (3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required
 248 to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette
 249 under Section ~~[26-44-202]~~ 59-14-602 and manufactured by a tobacco product manufacturer
 250 required to place funds into escrow under Section ~~[26-44-203]~~ 59-14-603 shall report annually to
 251 the commission:

252 (a) the quantity of cigarettes upon which the tax is levied; and

253 (b) the name of the manufacturer of each cigarette.

254 (4) The reports under Subsections (2) and (3) shall be made no later than January 31 for
 255 the preceding calendar year pursuant to rules established by the commission in accordance with
 256 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

259 **Part 6. Model Tobacco Settlement Statute**

260 ~~[26-44-101].~~ **59-14-600. Title.**

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

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

265 ~~[26-44-201].~~ **59-14-601. Findings and purpose.**

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

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

275 (3) Under these programs, the State pays millions of dollars each year to provide medical

276 assistance for these persons for health conditions associated with cigarette smoking.

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

281 (5) On November 23, 1998, leading United States tobacco product manufacturers entered
282 into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The
283 Master Settlement Agreement obligates these manufacturers, in return for a release of past, present,
284 and certain future claims against them as described therein, to pay substantial sums to the State
285 (tied in part to their volume of sales); to fund a national foundation devoted to the interests of
286 public health; and to make substantial changes in their advertising and marketing practices and
287 corporate culture, with the intention of reducing underage smoking.

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

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

297 ~~[26-44-202].~~ **59-14-602. Definitions.**

298 As used in this part:

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

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

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

307 Settlement Agreement.

308 (4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated
309 under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in
310 paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in
311 the product, which, because of its appearance, the type of tobacco used in the filler, or its
312 packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c)
313 any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance,
314 the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or
315 purchased by, consumers as a cigarette described in clause (a) of this definition. The term
316 "cigarette" includes "roll-your-own," (i.e., any tobacco which, because of its appearance, type,
317 packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers
318 as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of
319 "roll-your-own" tobacco shall constitute one individual "cigarette."

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

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

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

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

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

335 (i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the
336 United States, including cigarettes intended to be sold in the United States through an importer
337 (except where such importer is an original participating manufacturer (as that term is defined in

338 the Master Settlement Agreement) that will be responsible for the payments under the Master
339 Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection
340 II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection II(z)
341 of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does
342 not market or advertise such cigarettes in the United States);

343 (ii) is the first purchaser anywhere for resale in the United States of cigarettes
344 manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
345 (iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

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

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

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

357 ~~[26-44-203].~~ **59-14-603. Requirements.**

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

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

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

366 (i) 1999: \$.0094241 per unit sold after the date of enactment of this Act;
367 (ii) 2000: \$.0104712 per unit sold;
368 (iii) for each of 2001 and 2002: \$.0136125 per unit sold;

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

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

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

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

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

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

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

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

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

397 (a) be required within 15 days to place such funds into escrow as shall bring it into
398 compliance with Subsection (1)(b) and Subsection (2). The court, upon a finding of a violation
399 of Subsection (1)(b) or Subsection (2), may impose a civil penalty to be paid to the General Fund

400 in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the
401 violation and in a total amount not to exceed 100% of the original amount improperly withheld
402 from escrow;

403 (b) in the case of a knowing violation, be required within 15 days to place such funds into
404 escrow as shall bring it into compliance with Subsection (1)(b) and Subsection (2). The court,
405 upon a finding of a knowing violation of Subsection (1)(b) or Subsection (2), may impose a civil
406 penalty to be paid to the General Fund of the State in an amount not to exceed 15% of the amount
407 improperly withheld from escrow per day of the violation and in a total amount not to exceed
408 300% of the original amount improperly withheld from escrow; and

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

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

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

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

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

419 **[26-44-301]. 59-14-701. Construction of this part.**

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

427 Section 10. Section **59-14-702**, which is renumbered from Section 26-44-302 is
428 renumbered and amended to read:

429 **[26-44-302]. 59-14-702. Formula for inflation adjustments.**

430 The formula for calculating inflation adjustments, which is referenced in Subsection

431 [26-44-202] 59-14-602(1), is set forth in Exhibit C of the Master Settlement Agreement as follows,
432 with the exception of Subsection (7) which is omitted:

433 Exhibit C

434 Formula For Calculating Inflation Adjustment

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

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

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

445 (4) The Inflation Adjustment Percentage applicable to payments due in any year after 2000
446 shall be calculated by applying each year the greater of 3% or the CPI% on the Inflation
447 Adjustment Percentage applicable to payments due in the prior year. Continuing the example in
448 subsection (3) above, if the CPI% with respect to a payment due in 2001 is 6%, then the Inflation
449 Adjustment Percentage applicable in 2001 would be 9.1800000%, an additional 6% applied on the
450 3% Inflation Adjustment Percentage applicable in 2000, and if the CPI% with respect to a payment
451 due in 2002 is 4%, then the Inflation Adjustment Percentage applicable in 2002 would be
452 13.5472000%, an additional 4% applied on the 9.1800000% Inflation Adjustment Percentage
453 applicable in 2001.

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

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

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

461 ~~[26-44-303]~~. **59-14-703. Allocable share.**

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

464 "Allocable Share" means the percentage set forth for the State in question as listed in
465 Exhibit A hereto, without regard to any subsequent alteration or modification of such State's
466 percentage share agreed to or by or among any States; or, solely for the purpose of calculating
467 payments under subsection IX(c)(2) (and corresponding payments under subsection IX(i)), the
468 percentage disclosed for the State in question pursuant to subsection IX(c)(2)(A) prior to June 30,
469 1999, without regard to any subsequent alteration or modification of such State's percentage share
470 agreed to by or among any States.

471 (2) The percentage set forth for Utah in Exhibit A to the Master Settlement Agreement is
472 0.4448869%.

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

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

478 ~~[26-44-304].~~ **59-14-704. Released claims.**

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

481 "Released Claims" means:

482 (1) for past conduct, acts or omissions, including any damages incurred in the future
483 arising from such past conduct, acts or omissions, those Claims directly or indirectly based on,
484 arising out of or in any way related, in whole or in part, to (A) the use, sale, distribution,
485 manufacture, development, advertising, marketing or health effects of, (B) the exposure to, or (C)
486 research, statements, or warnings regarding, Tobacco Products, including, but not limited to, the
487 Claims asserted in the actions identified in Exhibit D, or any comparable Claims that were, could
488 be or could have been asserted now or in the future in those actions or in any comparable action
489 in federal, state or local court brought by a Settling State or a Releasing Party, whether or not such
490 Settling State or Releasing Party has brought such action, except for claims not asserted in the
491 actions identified in Exhibit D for outstanding liability under existing licensing, or similar, fee
492 laws or existing tax laws, but not excepting claims for any tax liability of the Tobacco-Related

493 Organizations or of any Released Party with respect to such Tobacco-Related Organizations, which
494 claims are covered by the release and covenants set forth in this Agreement;

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

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

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

505 ~~[26-44-305]~~. **59-14-705. Releasing parties.**

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

508 (1) "Releasing Parties" means each Settling State and any of its past, present and future
509 agents, officials acting in their official capacities, legal representatives, agencies, departments,
510 commissions and divisions; and also means, to the full extent of the power of the signatories hereto
511 to release past, present and future claims, the following: (1) any Settling State's subdivisions,
512 political or otherwise, including, but not limited to, municipalities, counties, parishes, villages,
513 unincorporated districts and hospital districts, public entities, public instrumentalities and public
514 educational institutions; and (2) persons or entities acting in a parens patriae, sovereign,
515 quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not
516 any of them participate in this settlement, (A) to the extent that any such person or entity is seeking
517 relief on behalf of or generally applicable to the general public in such Settling State or the people
518 of the State, as opposed solely to private or individual relief for separate and distinct injuries, or
519 (B) to the extent that any such entity, as opposed to an individual, is seeking recovery of
520 health-care expenses, other than premium or capitation payments for the benefit of present or
521 retired state employees, paid or reimbursed, directly or indirectly, by a Settling State.

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

524 ~~[26-44-306]~~. 59-14-706. **Original participating manufacturer and related**
525 **terms.**

526 (1) "Original Participating Manufacturer," which is referenced in Subsection ~~[26-44-202]~~
527 59-14-602(9)(a)(i), is defined in the Master Settlement Agreement as follows:

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

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

535 "Relative market share" means an original participating manufacturer's respective share,
536 expressed as a percentage, of the total number of individual cigarettes shipped in or to the 50
537 United States, the District of Columbia and Puerto Rico by all the original participating
538 manufacturers during the calendar year immediately preceding the year in which the payment at
539 issue is due, regardless of when such payment is made, as measured by the original participating
540 manufacturers' reports of shipments of cigarettes to Management Science Associates, Inc., or a
541 successor entity acceptable to both the original participating manufacturers and a majority of those
542 attorneys general who are both the attorney general of a settling state and a member of the NAAG
543 executive committee at the time in question. A cigarette shipped by more than one participating
544 manufacturer shall be deemed to have been shipped solely by the first participating manufacturer
545 to do so. For purposes of the definition and determination of "relative market share," 0.09 ounces
546 of "roll your own" tobacco shall constitute one individual cigarette.

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

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

555 own" tobacco shall constitute one individual cigarette; for purposes of the definition and
556 determination of "market share" with respect to all other calculations, 0.0325 ounces of "roll your
557 own" tobacco shall constitute one individual cigarette.

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

560 ~~[26-44-307]~~. **59-14-707. Participating manufacturer.**

561 (1) "Participating Manufacturer," which is referenced in Subsection ~~[26-44-203]~~
562 59-14-603(1), is defined in the Master Settlement Agreement as follows:

563 "Participating Manufacturer" means a Tobacco Product Manufacturer that is or becomes
564 a signatory to this Agreement, provided that (1) in the case of a Tobacco Product Manufacturer that
565 is not an Original Participating Manufacturer, such Tobacco Product Manufacturer is bound by this
566 Agreement and the Consent Decree, or, in any Settling State that does not permit amendment of
567 the Consent Decree, a Consent Decree containing terms identical to those set forth in the Consent
568 Decree, in all Settling States in which this Agreement and the Consent Decree binds Original
569 Participating Manufacturers, provided, however, that such Tobacco Product Manufacturer need
570 only become bound by the Consent Decree in those Settling State in which the Settling State has
571 filed a Released Claim against it, and (2) in the case of a Tobacco Product Manufacturer that signs
572 this Agreement after the MSA Execution Date, such Tobacco Product Manufacturer, within a
573 reasonable period of time after signing this Agreement, makes any payments, including interest
574 thereon at the Prime Rate, that it would have been obligated to make in the intervening period had
575 it been a signatory as of the MSA Execution Date. "Participating Manufacturer" shall also include
576 the successor of a Participating Manufacturer. Except as expressly provided in this Agreement,
577 once an entity becomes a Participating Manufacturer such entity shall permanently retain the status
578 of Participating Manufacturer. Each Participating Manufacturer shall regularly report its shipments
579 of Cigarettes in or to the 50 United States, the District of Columbia and Puerto Rico to
580 Management Science Associates, Inc., or a successor entity as set forth in subsection (mm). Solely
581 for purposes of calculations pursuant to subsection IX(d), a Tobacco Product Manufacturer that
582 is not a signatory to this Agreement shall be deemed to be a "Participating Manufacturer" if the
583 Original Participating Manufacturers unanimously consent in writing.

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

585 Section 16. Section **59-14-708**, which is renumbered from Section 26-44-308 is

586 renumbered and amended to read:

587 ~~[26-44-308]~~. 59-14-708. **Payments by subsequent participating**
588 **manufacturers.**

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

592 (1) A Subsequent Participating Manufacturer shall have payment obligations under this
593 Agreement only in the event that its Market Share in any calendar year exceeds the greater of (1)
594 its 1998 Market Share or (2) 125% of its 1997 Market Share, subject to the provisions of
595 subsection (i)(4). In the year following any such calendar year, such Subsequent Participating
596 Manufacturer shall make payments corresponding to those due in that same following year from
597 the Original Participating Manufacturers pursuant to subsections VI(c), except for the payment due
598 on March 31, 1999, IX(c)(1), IX(c)(2) and IX(e). The amounts of such corresponding payments
599 by a Subsequent Participating Manufacturer are in addition to the corresponding payments that are
600 due from the Original Participating Manufacturers and shall be determined as described in
601 subsection (2) and (3) below. Such payments by a Subsequent Participating Manufacturer shall
602 (A) be due on the same dates as the corresponding payments are due from Original Participating
603 manufacturers; (B) be for the same purpose as such corresponding payments; and (C) be paid,
604 allocated and distributed in the same manner as such corresponding payments.

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

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

629 (4) For purposes of this Subsection (i), the 1997, or 1998, as applicable, Market Share, and
630 125% thereof, of those Subsequent Participating Manufacturers that either (A) became a signatory
631 to the Agreement more than 60 days after the MSA Execution Date or (B) had no Market Share
632 in 1997, or 1998, as applicable, shall equal zero.

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

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

635 **59-14-801. Availability of master settlement agreement.**

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

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

640 **63-2-206. Sharing records.**

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

644 (a) serves as a repository or archives for purposes of historical preservation, administrative
645 maintenance, or destruction;

646 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record
647 is necessary to a proceeding or investigation;

648 (c) is authorized by state statute to conduct an audit and the record is needed for that
649 purpose; or

650 (d) is one that collects information for presentence, probationary, or parole purposes.

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

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

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

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

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

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

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

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

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

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

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

674 (b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection
675 63-2-304(4).

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 1-25-00 3:31 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel