

SALES OF CIGARETTES INTENDED FOR EXPORT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert F. Montgomery

AN ACT RELATING TO CIGARETTES; PROHIBITING THE SALE OF CIGARETTES MANUFACTURED FOR EXPORT OR NOT IN COMPLIANCE WITH FEDERAL LAW; EXEMPTING PROHIBITED CIGARETTES FROM THE CIGARETTE TAX; REQUIRING PERIODIC REPORTING OF CIGARETTES IMPORTED TO THE STATE FROM OUTSIDE THE UNITED STATES; IMPOSING PENALTIES AND PROVIDING A PRIVATE RIGHT OF ACTION; AUTHORIZING THE DESTRUCTION OF CONTRABAND GOODS; AUTHORIZING DISCLOSURE OF DATA; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

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

59-14-204, as last amended by Chapter 416, Laws of Utah 1998

59-14-205, as renumbered and amended by Chapter 2, Laws of Utah 1987

ENACTS:

59-14-210, Utah Code Annotated 1953

59-14-211, Utah Code Annotated 1953

59-14-212, Utah Code Annotated 1953

59-14-213, Utah Code Annotated 1953

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

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

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

(1) Any tax commissioner, agent, clerk, or other officer or employee of the commission or any representative, agent, clerk, or other officer or employee of any county, city, or town may not divulge or make known in any manner any information gained by him from any return filed with the commission. The officials charged with the custody of such returns are not required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except:

- (a) in accordance with judicial order;
 - (b) on behalf of the commission in any action or proceeding under this title or other law under which persons are required to file returns with the commission;
 - (c) on behalf of the commission in any action or proceeding to which the commission is a party; or
 - (d) on behalf of any party to any action or proceeding under this title when the report or facts shown thereby are directly involved in such action or proceeding. In any event, the court may require the production of, and may admit in evidence, any portion of reports or of the facts shown by them, as are specifically pertinent to the action or proceeding.
- (2) This section does not prohibit:
- (a) a person or his duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;
 - (b) the publication of statistics as long as they are classified to prevent the identification of particular reports or returns;
 - (c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:
 - (i) who brings action to set aside or review the tax based on such report or return;
 - (ii) against whom an action or proceeding is contemplated or has been instituted under this title; or
 - (iii) against whom the state has an unsatisfied money judgment.
- (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may, by rule, provide for a reciprocal exchange of information with the United States Internal Revenue Service or the revenue service of any other state.
- (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may, by rule, share information gathered from returns and other written statements with the federal government, any other state, any of their political subdivisions, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government grant substantially similar

privileges to this state.

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

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

(e) (i) Notwithstanding Subsection (1), to provide information necessary for the implementation of Title 26, Chapter 44, Tobacco Manufacturers Responsibility Act, the commission shall annually report to the executive director of the Department of Health on or before March 1:

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

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

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

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

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

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

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

(ii) upon request provide to any person data reported to the commission under Subsections

59-14-212(1)(a) through (1)(c) and Subsection 59-14-212(1)(g).

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

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

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

Section 2. Section **59-14-204** is amended to read:

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

(1) [~~There~~] Except for cigarettes described under Section 59-14-210, there is levied a tax upon the sale, use, or storage of cigarettes in the state.

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

(a) 2.575 cents on each cigarette, for all cigarettes weighing not more than three pounds per thousand cigarettes; and

(b) 3.175 cents on each cigarette, for all cigarettes weighing in excess of three pounds per thousand cigarettes.

(3) The tax levied under Subsection (1) shall be paid by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

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

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

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

(c) The Department of Health shall expend the funds in the account for a tobacco prevention and control media campaign targeted towards children.

Section 3. Section **59-14-205** is amended to read:

59-14-205. Stamping procedure -- Rules -- Exceptions.

(1) The taxes imposed on cigarettes by this chapter shall be paid by affixing stamps in the manner and at the time prescribed in this section, unless otherwise required by rules promulgated by the commission.

(2) All manufacturers, distributors, wholesalers, and retail dealers shall securely affix the stamps to each individual package or container of cigarettes.

(3) Stamps shall be securely affixed to each individual package within 72 hours after any of the cigarettes are received by any wholesaler, distributor, or retailer within the state. All cigarettes shall be stamped before sale within the state. If products subject to this chapter are manufactured within the state they shall be stamped by the manufacturer when and as sold.

(4) The commission may, where it is practical and reasonable for the enforcement of the collection of taxes, promulgate rules to permit any of the articles taxable under this chapter to remain unstamped in the hands of the wholesaler or distributor until the original case or crate is broken, unpacked, or sold.

(5) The commission may permit any manufacturer, wholesaler, or distributor to sell and export to a regular dealer in these articles outside the state, any of the articles without affixing the stamps. Where the articles are allowed to remain unstamped in the hands of the wholesaler or distributor, the commission may require the wholesaler or distributor to secure a surety bond from a surety company authorized to do business in this state. The bond shall be conditioned to secure the payment of all taxes and penalties provided in this chapter.

(6) No manufacturer, distributor, wholesaler, or retail dealer may remove, conceal, or obscure a cigarette package:

(a) notice described under Subsection 59-14-210(1)(a)(i); or

(b) warning label not in compliance with 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act.

~~[(6)]~~ (7) Any person failing to properly affix and cancel stamps to the cigarettes under rules promulgated by the commission, may be required by the commission to pay as part of the tax, a penalty of \$25 for each offense, to be assessed and collected by the commission as provided in

Section 59-14-405. Each article, package, or container found not having proper stamps affixed to it shall be deemed a separate offense. The presence of any package or container in a place of business conducting retail sales shall be prima facie evidence that it is intended for sale and subject to taxes under this chapter.

Section 4. Section **59-14-210** is enacted to read:

59-14-210. Prohibited sales of cigarettes.

(1) Except as provided in Subsection (2), a person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes:

(a) in a package which:

(i) bears a statement, label, stamp, sticker, or other notice that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including the following and similar notices:

(A) "For Export Only";

(B) "U.S. Tax-Exempt"; and

(C) "For Use Outside the U.S."; or

(ii) does not comply with federal law, including 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information;

(b) imported to the United States in violation of 26 U.S.C. 5754;

(c) the licensee knows or has reason to know were not manufactured for sale, distribution, or use in the United States;

(d) for which a list of added ingredients has not been submitted to the federal Department of Health and Human Services pursuant to 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act; or

(e) known by the licensee to be otherwise in violation of other related federal law.

(2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.

Section 5. Section **59-14-211** is enacted to read:

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

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

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

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

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

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

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

(d) affixes a stamp used to pay the tax imposed under Section 59-14-204 to a package or container of cigarettes:

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

(ii) known by the person affixing the stamp to be altered as described under Subsection (1)(c).

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

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

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

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

(ii) \$5,000.

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

Section 6. Section **59-14-212** is enacted to read:

59-14-212. Reporting of imported cigarettes -- Penalty.

(1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States shall provide to the commission the following as they pertain to the imported cigarettes:

(a) a copy of the importer's federal import permit;

(b) the customs form showing the tax information required by federal law;

(c) a statement signed under penalty of perjury by the manufacturer or importer that the manufacturer or importer has complied with:

(i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information; and

(ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding reporting of added ingredients;

(d) the name of the person from whom the person affixing the stamp received the cigarettes;

(e) the name of the person to whom the person affixing the stamp delivered the cigarettes, unless the person receiving the cigarettes was the ultimate consumer;

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

(g) the brand and brand style of the cigarettes.

(2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.

(3) The information under Subsection (1) shall be provided on a quarterly basis pursuant to rules established by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):

(a) is guilty of a class B misdemeanor; and

(b) may be subject to:

- (i) revocation or suspension of a license issued under Section 59-14-202; and
- (ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which a report was not properly made; or
 - (B) \$5,000.

(5) The information under Subsection (1) may be disclosed by the commission as provided under Subsection 59-1-403(3)(f).

Section 7. Section **59-14-213** is enacted to read:

59-14-213. Contraband goods.

(1) Any cigarettes in violation of Section 59-14-211 or not properly reported under Subsection 59-14-212(1) are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.

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

Section 8. **Effective date.**

This act takes effect on July 1, 2000.