

1 **CIGARETTE TAX STAMP AND CONTRABAND**

2 **AMENDMENTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: D. Edgar Allen**

6 **This act modifies provisions related to the Tax Code. The act amends confidentiality**
7 **restrictions. The act prohibits a person licensed to sell cigarettes in the state from selling**
8 **cigarettes of a tobacco product manufacturer who is not in compliance with escrow**
9 **requirements. The act changes tobacco escrow reporting requirements from an annual to**
10 **quarterly reports and imposes penalties for failure to file reports. The act amends the**
11 **definition of contraband cigarette. The act makes technical amendments.**

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

13 AMENDS:

14 **59-1-403**, as last amended by Chapters 262, 270 and 314, Laws of Utah 2001

15 **59-14-210**, as enacted by Chapter 190, Laws of Utah 2000

16 **59-14-213**, as enacted by Chapter 190, Laws of Utah 2000

17 **59-14-407**, as last amended by Chapter 229, Laws of Utah 2000

18 REPEALS:

19 **59-14-207**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

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

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

22 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

23 (1) (a) Except as provided in this section, any of the following may not divulge or make
24 known in any manner any information gained by that person from any return filed with the
25 commission:

26 (i) a tax commissioner;

27 (ii) an agent, clerk, or other officer or employee of the commission; or



28 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

29 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a return
30 filed with the commission is not required to produce the return or evidence of anything contained
31 in the return in any action or proceeding in any court, except:

32 (i) in accordance with judicial order;

33 (ii) on behalf of the commission in any action or proceeding under:

34 (A) this title; or

35 (B) other law under which persons are required to file returns with the commission;

36 (iii) on behalf of the commission in any action or proceeding to which the commission is
37 a party; or

38 (iv) on behalf of any party to any action or proceeding under this title if the report or facts
39 shown by the return are directly involved in the action or proceeding.

40 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
41 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
42 pertinent to the action or proceeding.

43 (2) This section does not prohibit:

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

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

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

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

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

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

54 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission
55 may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
56 provide for a reciprocal exchange of information with:

57 (i) the United States Internal Revenue Service; or

58 (ii) the revenue service of any other state.

59 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
60 corporate franchise tax, the commission may by rule, made in accordance with Title 63, Chapter
61 46a, Utah Administrative Rulemaking Act, share information gathered from returns and other
62 written statements with the federal government, any other state, any of the political subdivisions
63 of another state, or any political subdivision of this state, except as limited by Sections 59-12-209
64 and 59-12-210, if these political subdivisions or the federal government grant substantially similar
65 privileges to this state.

66 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
67 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
68 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
69 identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

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

75 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
76 provide that person sales and purchase volume data reported to the commission on a report, return,
77 or other information filed with the commission under:

78 (i) Chapter 13, Part 2, Motor Fuel; or

79 (ii) Chapter 13, Part 4, Aviation Fuel.

80 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
81 as defined in Section 59-22-202, the commission shall report to the manufacturer:

82 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
83 manufacturer and reported to the commission for the previous calendar year under Section
84 59-14-407; and

85 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
86 manufacturer for which a tax refund was granted during the previous calendar year under Section
87 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

88 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
89 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited

90 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

91 [~~(g)~~] (h) Notwithstanding Subsection (1), the commission may:

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

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

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

96 (ii) upon request provide to any person data reported to the commission under Subsections
97 59-14-212(1)(a) through (1)(c) and Subsection 59-14-212(1)(g).

98 [~~(h)~~] (i) Notwithstanding Subsection (1), the commission shall, at the request of a
99 committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of
100 Planning and Budget, provide to the committee or office the total amount of revenues collected
101 by the commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified
102 by the committee or office.

103 [~~(i)~~] (j) Notwithstanding Subsection (1), the commission shall at the request of the
104 Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection
105 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

106 (4) (a) Reports and returns shall be preserved for at least three years.

107 (b) After the three-year period provided in Subsection (4)(a) the commission may destroy
108 a report or return.

109 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

110 (b) If the person described in Subsection (5)(a) is an officer or employee of the state, the
111 person shall be dismissed from office and be disqualified from holding public office in this state
112 for a period of five years thereafter.

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

114 Section 2. Section **59-14-210** is amended to read:

115 **59-14-210. Prohibited sales of cigarettes.**

116 (1) Except as provided in Subsection [~~(2)~~] (3), a person licensed under Section 59-14-202
117 may not barter, sell, exchange, or offer for sale cigarettes:

118 (a) in a package which:

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

121 and similar notices:

122 (A) "For Export Only";

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

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

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

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

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

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

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

134 (2) A person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for
135 sale cigarettes of a tobacco product manufacturer that is prohibited from selling cigarettes to
136 consumers within the state under Subsection 59-22-203(3)(c).

137 ~~[(2)]~~ (3) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free
138 merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b)
139 and any implementing regulations unless the cigarettes are brought back into the customs territory
140 for resale within the customs territory.

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

142 **59-14-213. Contraband goods.**

143 (1) Any cigarettes in violation of ~~[Section]~~ any state or federal law, including Sections
144 59-14-203, 59-14-205, 59-14-211 or [not properly reported under] Subsection 59-14-212(1) are
145 contraband goods and may be seized without a warrant by the commission, its employees, or any
146 peace officer of the state or its political subdivisions.

147 (2) Any ~~[seized]~~ goods seized pursuant to Subsection (1) shall be delivered to the
148 commission and destroyed.

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

150 **59-14-407. Reporting of manufacturer name.**

151 (1) As used in this section:

152 (a) "Cigarette" has the same meaning as defined in Section 59-22-202.

153 (b) "Tobacco product manufacturer" has the same meaning as defined in Section
154 59-22-202.

155 (2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section
156 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured by a
157 tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall
158 report [~~annually~~] quarterly to the commission:

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

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

161 (3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required
162 to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette
163 under Section 59-22-202 and manufactured by a tobacco product manufacturer required to place
164 funds into escrow under Section 59-22-203 shall report [~~annually~~] quarterly to the commission:

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

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

167 (4) (a) The reports under Subsections (2) and (3) shall be made no later than [~~January 31~~
168 ~~for the preceding calendar year~~] quarterly on or before the last day of the month following each
169 calendar quarterly period pursuant to rules established by the commission in accordance with Title
170 63, Chapter 46a, Utah Administrative Rulemaking Act.

171 (b) A person required to file a report under this section is subject to the penalties under
172 Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or fraudulent
173 information.

174 Section 5. **Repealer.**

175 This act repeals:

176 Section **59-14-207, Unstamped cigarettes -- Contraband goods -- Seizure.**

Legislative Review Note
as of 10-24-01 2:52 PM

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

Office of Legislative Research and General Counsel

12-05-01 10:08 AM

S.B. 7

Committee Note

The Health and Human Services Interim Committee recommended this bill.