

COUNTERFEIT TOBACCO PRODUCTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill amends the Cigarette and Tobacco Tax and Licensing Act.

Highlighted Provisions:

This bill:

- ▶ adds definitions;
- ▶ amends provisions related to place of business and license requirements;
- ▶ changes penalties for selling in violation of the chapter;
- ▶ provides for taxation of cigarettes purchased by nontribal members on Indian lands;
- ▶ amends stamping procedures; and
- ▶ amends provisions related to unstamped cigarettes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

59-14-102, as renumbered and amended by Chapter 2, Laws of Utah 1987

59-14-201, as last amended by Chapter 319, Laws of Utah 1998

59-14-202, as last amended by Chapter 198, Laws of Utah 1999

59-14-203, as last amended by Chapter 319, Laws of Utah 1998

59-14-204, as last amended by Chapter 248, Laws of Utah 2002



- 28 **59-14-205**, as last amended by Chapter 190, Laws of Utah 2000
- 29 **59-14-209**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 30 **59-14-211**, as last amended by Chapter 175, Laws of Utah 2002
- 31 **59-14-213**, as last amended by Chapters 52 and 175, Laws of Utah 2002

32 ENACTS:

- 33 **59-14-204.5**, Utah Code Annotated 1953
- 34 **59-14-207.5**, Utah Code Annotated 1953
- 35 **59-14-207.6**, Utah Code Annotated 1953



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

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

39 **59-14-102. Definitions.**

40 As used in this chapter:

41 (1) "Cigarette" means any roll for smoking made wholly or in part of tobacco,
42 irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed
43 with any other ingredient, the wrapper or cover of which is made of paper or any other
44 substance or material except tobacco.

45 (2) "Counterfeit cigarette" means:

- 46 (a) cigarettes that have false manufacturing labels; or
- 47 (b) packages of cigarettes bearing counterfeit tax stamps.

48 (3) "Importer" means any person who imports into the United States, either directly or
49 indirectly, a finished cigarette for sale or distribution.

50 (4) "Indian country" is as defined in 18 U.S.C. Sec. 1151.

51 (5) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
52 other person doing business as a distributor or retailer of cigarettes on Indian country located in
53 the state.

54 (6) "Manufacturer" means any person who manufactures, fabricates, assembles,
55 processes, or labels a finished cigarette.

56 (7) "Retailer" means any person who sells or distributes cigarettes or intends to sell or
57 distribute cigarettes to a consumer in the state.

58 (8) "Stamp" or "stamps" means the indicia required to be placed on a cigarette package

59 that:

60 (a) evidences payment of the tax on cigarettes required by Section 59-14-204; or

61 (b) indicates that the cigarettes are intended for a sale or distribution in Utah that is
62 exempt from state tax under Subsection 59-14-204.5(1).

63 [~~2~~] (9) "Tobacco products" means all products made of, or containing tobacco, except
64 cigarettes.

65 Section 2. Section **59-14-201** is amended to read:

66 **59-14-201. License -- Fee -- Bond -- Exceptions.**

67 (1) It is unlawful for any person in this state to manufacture, import, distribute, barter,
68 sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the
69 commission under Section 59-14-202.

70 (2) (a) A license may not be issued for the sale of cigarettes until the applicant has paid
71 a license fee of \$30 or a license renewal fee of \$20, as appropriate.

72 (b) The fee for reinstatement of a license that has been revoked, suspended, or allowed
73 to expire is \$30.

74 (3) (a) A license may not be issued until the applicant files a bond with the commission.
75 The commission shall determine the form and the amount of the bond, the minimum amount of
76 which shall be \$500. The bond shall be executed by the applicant as principal, with a corporate
77 surety, payable to the state and conditioned upon the faithful performance of all the
78 requirements of this chapter, including the payment of all taxes, penalties, and other
79 obligations.

80 (b) Applicants are not required to post a bond who:

81 (i) purchase during the license year only products which have the proper state stamp
82 affixed as required by this chapter; and

83 (ii) file an affidavit with their application attesting to this fact.

84 Section 3. Section **59-14-202** is amended to read:

85 **59-14-202. Issuance of licenses -- Common carrier licenses -- Contents -- Valid for**
86 **three years -- Revocation -- Distribution requirements.**

87 (1) Cigarette licenses may be issued only to a person owning or operating the place or
88 cigarette vending machine from which the cigarette sales are made.

89 (2) (a) [~~If sales are made at two or more separate places by that person, a separate~~] A

90 license is required for each separate place of business [~~is required~~].

91 (b) A licensee shall notify the commission within 30 days in the event that it changes
92 the location of the business.

93 (3) Applications for a license under this chapter shall be submitted on a form
94 authorized by the commission. Each application shall state:

95 (a) the name and address of the applicant;

96 (b) the address of each place of business where the applicant's business will be
97 conducted within this state; and

98 (c) any other information the commission may require relevant to license qualification.

99 ~~[(3)]~~ (4) A common carrier is not required to obtain more than one license for sales on
100 conveyances operated by that carrier within the state. All conveyances owned by a common
101 carrier are considered as one place of business for the purpose of this chapter.

102 (5) No license may be granted, maintained, or renewed:

103 (a) if any combination of people owning directly or indirectly, in the aggregate, more
104 than 10% of the ownership interests in the applicant:

105 (i) has been convicted of knowingly:

106 (A) selling stolen or counterfeit cigarettes;

107 (B) receiving stolen or counterfeit cigarettes; or

108 (C) being involved in the smuggling or counterfeiting of cigarettes;

109 (ii) is a cigarette manufacturer or importer that is not a:

110 (A) participating manufacturer as defined in subsection II(jj) of the "Master Settlement
111 Agreement"; or

112 (B) in full compliance with the provisions of this chapter dealing with nonparticipating
113 manufacturers;

114 (iii) has imported, or caused to be imported, into the United States any cigarette in
115 violation of 19 U.S.C. 1681a; or

116 (iv) has imported, or caused to be imported into the United States, or manufactured for
117 sale or distribution in the United States any cigarette that does not fully comply with the

118 Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331, et. seq.; and

119 (b) until the applicant:

120 (i) has paid any delinquent cigarette taxes; and

121 (ii) has served the period of suspension resulting from any prior revoked license.

122 [~~4~~] (6) Each license shall be numbered, show the residence and place of business of
123 the licensee, and is nontransferable.

124 [~~5~~] (7) (a) Each license is in effect for three years from the date of issuance, unless
125 the license is earlier revoked by the commission.

126 (b) The license expires on the expiration date shown on the license, unless the licensee
127 renews it in accordance with commission rules.

128 (c) The commission shall by rule establish procedures for the renewal and
129 reinstatement of licenses.

130 [~~6~~] (8) (a) [~~The~~] In addition to any civil or criminal penalty provided by law, the
131 commission shall, after providing notice and a hearing, revoke the license of any person:

132 (i) found to have violated this title[-]; or

133 (ii) who no longer qualifies for licensure under Subsection (5).

134 (b) [~~A~~] In the case of a revocation under Subsection (8)(a)(i), a license may not be
135 issued to that person within a period of two years after the violation.

136 [~~7~~] (9) A licensee may not barter, sell, exchange, or offer for sale:

137 (a) cigarettes in an individual package or container that contains less than 20 cigarettes;
138 or

139 (b) roll-your-own cigarettes in an individual package or container that contains less
140 than 0.6 ounces of tobacco.

141 (10) (a) The commission shall maintain a list that includes the identity of all people
142 licensed under this section.

143 (b) The list shall:

144 (i) include the type of license possessed; and

145 (ii) be updated by the commission at least once per quarter.

146 Section 4. Section **59-14-203** is amended to read:

147 **59-14-203. Failure to obtain a license -- Penalty.**

148 Any person engaging in the business of manufacturing, importing, distributing, or
149 selling or offering to sell cigarettes without holding a valid license that is currently not
150 suspended or revoked is guilty of a class B misdemeanor for each offense.

151 Section 5. Section **59-14-204** is amended to read:

152 **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**
153 **revenues.**

154 (1) Except for cigarettes described under [~~Section~~] Subsection 59-14-210(3), there is
155 levied a tax upon the sale, use, [~~or~~] storage, or distribution of cigarettes in the state.

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

157 (a) 3.475 cents on each cigarette, for all cigarettes weighing not more than three
158 pounds per thousand cigarettes; and

159 (b) 4.075 cents on each cigarette, for all cigarettes weighing in excess of three pounds
160 per thousand cigarettes.

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

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

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

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

170 (c) The Department of Health shall expend the funds deposited in the account under
171 Subsection (5)(b) for a tobacco prevention and control media campaign targeted towards
172 children.

173 (d) The following revenue generated from the tax increase imposed under Subsection
174 (1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted
175 Account:

176 (i) 22% of the revenue to be annually appropriated to the Department of Health for
177 tobacco prevention, reduction, cessation, and control programs;

178 (ii) 15% of the revenue to be annually appropriated to the University of Utah Health
179 Sciences Center for the Huntsman Cancer Institute for cancer research; and

180 (iii) 21% of the revenue to be annually appropriated to the University of Utah Health
181 Sciences Center for medical education at the University of Utah School of Medicine.

182 (e) Any balance remaining in the Cigarette Tax Restricted Account at the end of the

183 fiscal year shall be appropriated during the next fiscal year for the purposes set forth in
184 Subsections (5)(d)(i) through (5)(d)(iii) in proportion to the amount of revenue deposited into
185 the account for each purpose.

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

190 (g) Any program or entity that receives funding under Subsection (5)(d) shall provide
191 an annual report to the Health and Human Services Interim Committee no later than September
192 1 of each year. The report shall include:

- 193 (i) the amount funded;
194 (ii) the amount expended;
195 (iii) a description of the effectiveness of the program; and
196 (iv) if the program is a tobacco cessation program, the report required in Section
197 63-97-401.

198 Section 6. Section **59-14-204.5** is enacted to read:

199 **59-14-204.5. Application of excise tax on tribal lands.**

200 (1) (a) Cigarettes sold to or received by members of a federally recognized Indian tribe
201 that are purchased or received on the tribe's Indian country are not subject to the tax imposed
202 by Section 59-14-204.

203 (b) Cigarettes exempt from tax under 26 U.S.C. Sec. 5701 and distributed in
204 accordance with federal regulations are not subject to the tax imposed by Section 59-14-204.

205 (2) (a) The tax applicable to cigarettes sold to or received by nontribal members on
206 Indian lands is equal to the state tax imposed by Section 59-14-204, minus any tribal tax
207 actually paid.

208 (b) If the application of the tax offset for tribal taxes permitted in Subsection (2)(a)
209 results in a negative balance, the taxes owed to the state are zero.

210 (c) (i) Cigarettes taxed pursuant to this Subsection (2) shall bear a tax stamp as
211 required by Section 59-14-205 in an amount equal to the tax imposed by Section 59-14-204.

212 (ii) The commission shall at least semi annually rebate to an Indian tribal entity that is
213 in compliance with this chapter the lesser of:

214 (A) an amount equal to the tribal tax imposed on sales under this Subsection (2); or
215 (B) the face value of the tax stamps affixed to cigarettes sold under this Subsection (2).

216 Section 7. Section **59-14-205** is amended to read:

217 **59-14-205. Stamping procedure -- Rules -- Exceptions.**

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

221 (2) All manufacturers, importers, distributors, wholesalers, and retail dealers shall
222 securely affix the stamps to each individual package or container of cigarettes sold in the state,
223 and may not sell or provide cigarette stamps to any other person.

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

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

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

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

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

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

244 (7) Any person failing to properly affix and cancel stamps to the cigarettes, under rules

245 promulgated by the commission, may be required by the commission to pay as part of the tax,
 246 and in addition to any other penalty provided in this chapter, a penalty of \$25 for each offense,
 247 to be assessed and collected by the commission as provided in Section 59-14-405. Each article,
 248 package, or container found not having proper stamps affixed to it shall be deemed a separate
 249 offense. The presence of any package or container in a place of business conducting retail sales
 250 shall be prima facie evidence that it is intended for sale and subject to taxes under this chapter.

251 Section 8. Section **59-14-207.5** is enacted to read:

252 **59-14-207.5. Transactions only with licensed manufacturers, importers,**
 253 **distributors, and retailers.**

254 (1) A manufacturer or importer may sell or distribute cigarettes to a licensee if that
 255 person is located or doing business in the state, including on any tribal lands located in the
 256 state.

257 (2) An importer may obtain cigarettes only from a licensed manufacturer.

258 (3) (a) A distributor may obtain cigarettes only from a licensed manufacturer, importer,
 259 or distributor.

260 (b) A distributor may sell or distribute cigarettes to a person who is a licensed
 261 distributor or retailer, if that person is located or doing business in the state, including on any
 262 tribal lands in the state.

263 (4) A retailer may obtain cigarettes only from a properly licensed person.

264 Section 9. Section **59-14-207.6** is enacted to read:

265 **59-14-207.6. Unstamped cigarettes.**

266 (1) A person who ships unstamped cigarette packages into the state, other than to a
 267 licensed manufacturer, importer, distributor, or retailer, shall first file with the commission a
 268 notice of shipment.

269 (2) Subsection (1) does not apply to a common or contract carrier that is transporting
 270 cigarettes through this state to another location under a proper bill of lading or freight bill,
 271 which states the quantity, source, and destination of the cigarettes.

272 Section 10. Section **59-14-209** is amended to read:

273 **59-14-209. Penalty for willful violation -- Counterfeit cigarettes.**

274 ~~[Any]~~ (1) A person [who] is guilty of a third degree felony if the person:

275 (a) knowingly, or with intent to defraud the state violates Subsection 59-14-211(4);

276 [1] (b) knowingly or willfully removes or otherwise prepares any adhesive stamp
277 with the intent to use or cause to be used after it has already been used;

278 [2] (c) knowingly or willfully buys, sells, offers for sale, or gives away any washed or
279 restored stamp to any person;

280 [3] (d) knowingly or willfully uses or has in his possession any washed or restored
281 stamp that has been removed from the package or container to which it had been previously
282 affixed;

283 [4] (e) reuses any stamp that has already been used to pay a tax provided in this
284 chapter, in order to indicate that person's payment of any tax; or

285 [5] (f) buys, sells, or offers for sale or has in his possession any counterfeit stamp[;].
286 [is guilty of a third degree felony.]

287 (2) Notwithstanding any other provision of law, the sale or possession for sale of
288 counterfeit cigarettes, as they are defined in Section 59-14-102, by a manufacturer, importer,
289 distributor, or retailer shall result:

290 (a) in the seizure by the commission or law enforcement agency of the manufacturer,
291 importer's, distributor's, or retailer's:

292 (i) counterfeit cigarettes; and

293 (ii) any personal property used in direct connection with the sale or possession for sale
294 of counterfeit cigarettes; and

295 (b) the forfeiture of the seized assets to the state.

296 Section 11. Section **59-14-211** is amended to read:

297 **59-14-211. Penalties for dealing with prohibited cigarettes -- Private right of**
298 **action.**

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

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

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

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

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

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

310 (d) affixes a stamp used to pay the tax imposed under Section 59-14-204, Part 3,
311 Tobacco Products, or Part 4, Cigarettes and Tobacco Products, to a package or container of
312 cigarettes:

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

314 (ii) known by the person affixing the stamp to be altered as described under Subsection
315 (1)(c); or

316 (iii) in violation of Section 59-14-408.

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

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

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

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

323 (ii) \$5,000.

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

326 (4) (a) The sale or possession for sale of counterfeit cigarettes by a manufacturer,
327 importer, distributor, or retailer is punishable as follows:

328 (i) a first violation involving a total quantity of less than 100 cartons of cigarettes is
329 punishable by a fine in an amount the greater of \$500 or five times the retail value of the
330 cigarettes;

331 (ii) a subsequent violation involving a total quantity of less than 100 cartons of
332 cigarettes is punishable by:

333 (A) the greater of a fine of \$2,000 or five times the retail value of the cigarettes;

334 (B) imprisonment not to exceed one year; or

335 (C) both imprisonment and a fine imposed by this Subsection (4)(a)(ii); and

336 (D) the revocation by the commission of the manufacturer, importer, distributor, or
337 retailer license for a period of up to two years;

338 (iii) a first violation involving a total quantity of 100 cartons of cigarettes or more is
339 punishable by:

340 (A) the greater of a fine of \$2,500 or five times the retail value of the cigarettes;

341 (B) imprisonment not to exceed five years; or

342 (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iii);

343 (iv) a second violation involving a quantity of 100 cartons of cigarettes or more is
344 punishable by:

345 (A) the greater of a fine of \$10,000 or five times the retail value of the cigarettes;

346 (B) imprisonment not to exceed five years; or

347 (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iv); and

348 (D) the revocation by the commission of the manufacturer, importer, distributor, or
349 retailer license for a period of up to five years; and

350 (v) a third and subsequent violation involving a quantity of 100 cartons of cigarettes or
351 more is punishable by:

352 (A) the greater of a fine of \$25,000 or five times the retail value of the cigarettes;

353 (B) imprisonment not to exceed five years; or

354 (C) both the fine and imprisonment imposed by this Subsection (4)(a)(v); and

355 (D) the revocation by the commission of the manufacturer, importer, distributor, or
356 retailer license for a period of up to five years; and

357 (b) any counterfeit cigarette seized by the commission shall be destroyed.

358 Section 12. Section **59-14-213** is amended to read:

359 **59-14-213. Contraband goods.**

360 (1) Any cigarettes in violation of the requirements of this chapter or of any state or
361 federal law, including Sections 59-14-203, 59-14-205, 59-14-209, 59-14-211, or Subsection
362 59-14-212(1) are contraband goods and may be seized without a warrant by the commission, its
363 employees, or any peace officer of the state or its political subdivisions.

364 (2) Any goods seized pursuant to Subsection (1) shall be delivered to the commission
365 and destroyed.

366 (3) Any cigarettes, as defined in Subsection 59-22-202(4), in violation of Subsection
367 59-14-408(2) are contraband goods and may be seized in accordance with Subsections (1) and
368 (2).

369 Section 13. **Effective date.**
370 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 2-3-04 4:58 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0279

Counterfeit Tobacco Products

20-Feb-04

10:08 AM

State Impact

No significant fiscal impact.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst