

1 **NONPARTICIPATING TOBACCO**
2 **MANUFACTURER'S FEE**

3 2004 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: David Ure**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Cigarette and Tobacco Tax and Licensing Act by imposing an
10 equity assessment on nonparticipating manufacturer cigarettes.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ levies an equity assessment of 1.75 cents per cigarette on nonparticipating tobacco
15 product manufacturers;
- 16 ▶ establishes collection and reporting procedures; and
- 17 ▶ establishes penalties for violations of the section.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 ENACTS:

24 **59-14-214**, Utah Code Annotated 1953

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

27 Section 1. Section **59-14-214** is enacted to read:



28 **59-14-214. Nonparticipating manufacturer equity assessment.**

29 (1) As used in this section, "nonparticipating manufacturer" means a tobacco product
30 manufacturer, as defined in Subsection 59-22-202(9), that is not a participating manufacturer
31 within the meaning of Subsection II(jj) of the Master Settlement Agreement, as defined in
32 Subsection 59-22-202(5).

33 (2) (a) There is levied an equity assessment, at the rate of 1.75 cents on each cigarette,
34 for all cigarette packages of nonparticipating manufacturers to which a stamp is affixed as
35 required under Section 59-14-205.

36 (b) The equity assessment imposed by this section is in addition to all other
37 assessments, fees, and taxes levied under existing law.

38 (c) The commission shall collect the equity assessment each month directly from the
39 nonparticipating manufacturer based on the information received by the commission under
40 Subsection (5).

41 (d) Except as otherwise provided in this section, the equity assessment shall be
42 collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied
43 by Section 59-14-204.

44 (3) The purposes of this equity assessment are:

45 (a) to recover health care costs to the state imposed by nonparticipating manufacturers;

46 (b) to prevent nonparticipating manufacturers from undermining the state's policy of
47 reducing underage smoking by offering cigarettes for sale substantially below the prices of
48 cigarettes of other manufacturers;

49 (c) to protect funding, which is reduced as a result of the growth of nonparticipating
50 manufacturer cigarette sales, for programs funded in whole or in part by payments to the state
51 under the Master Settlement Agreement, as defined in Subsection 59-22-202(5);

52 (d) to recoup settlement-payment revenue lost to the state as a result of
53 nonparticipating manufacturer cigarette sales;

54 (e) to fund enforcement and administration of:

55 (i) Section 59-14-408;

56 (ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers;

57 and

58 (iii) the equity assessment imposed by this section, including reasonable administrative

59 costs incurred by persons subject to Subsection (5); and

60 (f) to fund other purposes designated by the Legislature.

61 (4) (a) A nonparticipating manufacturer whose cigarettes are being offered for sale in
62 this state, on July 1, 2004 shall begin paying the equity assessment imposed by this section on a
63 monthly basis.

64 (b) If a nonparticipating manufacturer is not offering cigarettes for sale in this state on
65 July 1, 2004, but subsequently offers cigarettes for sale in the state, the nonparticipating
66 manufacturer shall prepay the equity assessment imposed by this section before offering the
67 cigarettes for sale in the state. The prepayment shall be:

68 (i) calculated by the commission reasonably projecting the number of cigarettes the
69 nonparticipating manufacturer may sell in the first calendar month in which the cigarettes are
70 offered for sale in this state, multiplied by 1.75 cents; or

71 (ii) \$50,000, whichever is greater.

72 (c) The commission may require a nonparticipating manufacturer to provide any
73 information reasonably necessary to determine the equity assessment due under Subsection
74 (4)(b)(i).

75 (d) The commission shall establish procedures to provide for:

76 (i) reimbursement to nonparticipating manufacturers if the equity assessment payable
77 for actual sales by the nonparticipating manufacturer are less than the prepayment made by the
78 nonparticipating manufacturer under Subsection (4)(b); and

79 (ii) additional payment by nonparticipating manufacturers if the equity assessment
80 payable for actual sales by the nonparticipating manufacturer are greater than the prepayment
81 made by the nonparticipating manufacturer under Subsection (4)(b).

82 (5) (a) Each manufacturer, distributor, wholesaler, or retail dealer who under Section
83 59-14-205 affixes a stamp to a package of cigarettes, shall report monthly to the commission
84 for each place of business, the number and denominations of stamps affixed to individual
85 packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor,
86 wholesaler, or retail dealer in the preceding month, including the manufacturer and brand
87 family.

88 (b) A person required to file a report under this section is subject to the penalties under
89 Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or

90 fraudulent information.

91 (6) (a) The cigarettes of a nonparticipating manufacturer, who is in violation of this
92 section, are contraband goods and are subject to Section 59-14-213.

93 (b) (i) The commission shall make available for public inspection a list of
94 nonparticipating tobacco product manufacturers and brand names that have paid the equity
95 assessment in compliance with Subsection (2).

96 (ii) The commission shall update the list as necessary.

97 (iii) A person is not liable under Subsection (6)(d) if the cigarette brand and
98 manufacturer name is included on the list.

99 (c) A person may not affix, or cause to be affixed, a stamp to an individual package or
100 container of cigarettes under Section 59-14-205, if the nonparticipating manufacturer is not
101 included on the list published by the commission under Subsection (6)(b)(i).

102 (d) A person affixing stamps in violation of Subsection (6)(c) is subject to penalties
103 imposed by this chapter for dealing with prohibited cigarettes and contraband goods.

Legislative Review Note
as of 2-5-04 12:33 PM

This bill requires all nonparticipating tobacco manufacturers to pay an equity assessment fee on cigarettes sold in this state. This assessment is in addition to the state's escrow requirements for nonparticipating manufacturers. The application of the assessment to nonparticipating manufacturers only may violate the Equal Protection Clause and Due Process Clause of the 14th Amendment to the U.S. Constitution. The statute may withstand an equal protection and due process challenge if the court determines that the Legislature's treatment of nonparticipating manufacturers is rationally related to a legitimate governmental interest.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0312

Nonparticipating Tobacco Manufacturer's Fee

13-Feb-04

10:34 AM

State Impact

Passage of this bill could increase General Fund revenues by as much as \$680,000. This bill has a legislative review note. There may be additional costs to the state if provisions are challenged in court.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$0	\$0	\$680,000	\$680,000
TOTAL	\$0	\$0	\$680,000	\$680,000

Individual and Business Impact

If the tax is passed to consumers certain individuals would see an increase of .35 cents per pack of cigarettes.

Office of the Legislative Fiscal Analyst