

**NONPARTICIPATING TOBACCO
MANUFACTURER AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Douglas C. Aagard

LONG TITLE

General Description:

This bill amends the Cigarette and Tobacco Tax and Licensing Act to enact additional enforcement provisions complimentary to the Master Settlement Agreement.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a certification requirement for participating and nonparticipating tobacco product manufacturers;
- ▶ requires the tax commission to create and maintain a directory of manufacturers in compliance with the certification requirements;
- ▶ prohibits stamping agents from applying stamps to products not listed as in compliance on the commission's directory;
- ▶ requires nonresident or foreign nonparticipating manufacturers to appoint an agent for service of process in the state;
- ▶ requires certain reporting requirements for stamping agents in the state;
- ▶ establishes rulemaking authority for the commission;
- ▶ provides for license revocation and penalties;
- ▶ enacts miscellaneous provisions regarding:
 - phase-in of reporting requirements;
 - disgorgement of profits for violations; and
 - recovery of costs and attorney's fees by the state;

▶ creates the Tobacco Control Restricted Account which consists of profits and gains ordered by the court to be deposited into the account for a violation of this part to be used for enforcement of the act; and

▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-1-403 (Contingently Superseded 05/02/05), as last amended by Chapter 156, Laws of Utah 2004

59-14-211, as last amended by Chapter 217, Laws of Utah 2004

59-14-213, as last amended by Chapters 217 and 221, Laws of Utah 2004

59-14-214, as enacted by Chapter 221, Laws of Utah 2004

ENACTS:

59-14-601, Utah Code Annotated 1953

59-14-602, Utah Code Annotated 1953

59-14-603, Utah Code Annotated 1953

59-14-604, Utah Code Annotated 1953

59-14-605, Utah Code Annotated 1953

59-14-606, Utah Code Annotated 1953

59-14-607, Utah Code Annotated 1953

59-14-608, Utah Code Annotated 1953

59-14-609, Utah Code Annotated 1953

59-14-610, Utah Code Annotated 1953

59-14-611, Utah Code Annotated 1953

REPEALS:

59-14-408, as last amended by Chapter 53, Laws of Utah 2004

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **59-1-403 (Contingently Superseded 05/02/05)** is amended to read:

**59-1-403 (Contingently Superseded 05/02/05). Confidentiality -- Exceptions --
Penalty -- Application to property tax.**

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

- (i) a tax commissioner;
- (ii) an agent, clerk, or other officer or employee of the commission; or
- (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

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

- (i) in accordance with judicial order;
- (ii) on behalf of the commission in any action or proceeding under:
 - (A) this title; or
 - (B) other law under which persons are required to file returns with the commission;
- (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or
- (iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically

pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's 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 the statistics are classified to prevent the identification of particular reports or returns; and

(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 a tax based on the 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, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) 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, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, 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, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, 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, as requested by the executive secretary, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

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

- (i) Chapter 13, Part 2, Motor Fuel; or
- (ii) Chapter 13, Part 4, Aviation Fuel.

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

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

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the 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).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

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

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

(j) Notwithstanding Subsection (1), the commission shall at the request of the Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection 59-12-104 (50) reported to the commission in accordance with Section 59-12-105.

(k) Notwithstanding Subsection (1), the commission shall make the ~~[hist]~~ directory required by ~~[Subsection 59-14-408(3)]~~ Section 59-14-603 available for public inspection.

(l) Notwithstanding Subsection (1), the commission shall comply with the reporting requirements of Section 10-1-409.

(m) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

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

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

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

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

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 2. Section **59-14-211** is amended 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, Part 3, Tobacco Products, or Part 4, Cigarettes and Tobacco Products, to a package or container of cigarettes:
 - (i) described under Section 59-14-210;
 - (ii) known by the person affixing the stamp to be altered as described under Subsection (1)(c); or
 - (iii) in violation of Section [~~59-14-408~~] 59-14-604.
- (2) If a person knowingly or with reason to know commits an act described in Subsections (1)(a) through (d), the commission shall:
- (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.
- (4) (a) The sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or retailer is punishable by a court of law as follows:
- (i) a first violation involving a total quantity of less than 100 cartons of cigarettes is punishable by a fine in an amount the greater of \$500 or five times the retail value of the

cigarettes;

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

- (A) the greater of a fine of \$2,000 or five times the retail value of the cigarettes;
- (B) imprisonment not to exceed one year; or
- (C) both imprisonment and a fine imposed by this Subsection (4)(a)(ii); and
- (D) the revocation by the commission of the manufacturer, importer, distributor, or

retailer license for a period of up to two years;

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

- (A) the greater of a fine of \$2,500 or five times the retail value of the cigarettes;
- (B) imprisonment not to exceed five years; or
- (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iii);

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

- (A) the greater of a fine of \$10,000 or five times the retail value of the cigarettes;
- (B) imprisonment not to exceed five years; or
- (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iv); and
- (D) the revocation by the commission of the manufacturer, importer, distributor, or

retailer license for a period of up to five years; and

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

- (A) the greater of a fine of \$25,000 or five times the retail value of the cigarettes;
- (B) imprisonment not to exceed five years; or
- (C) both the fine and imprisonment imposed by this Subsection (4)(a)(v); and
- (D) the revocation by the commission of the manufacturer, importer, distributor, or

retailer license for a period of up to five years; and

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

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

59-14-213. Contraband goods.

(1) Any cigarettes in violation of the requirements of this chapter or of any state or federal law, including Sections 59-14-203, 59-14-205, 59-14-209, 59-14-211, Subsection 59-14-212(1), or Section 59-14-214 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 goods seized pursuant to Subsection (1) shall be delivered to the commission and destroyed.

(3) Any cigarettes, as defined in Subsection 59-22-202(4), in violation of [~~Subsection 59-14-408(2)] Section 59-14-604 are contraband goods and may be seized in accordance with Subsections (1) and (2).~~

Section 4. Section **59-14-214** is amended to read:

59-14-214. Nonparticipating manufacturer equity assessment.

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

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

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

(c) The equity assessment imposed by this section shall be paid by affixing a stamp in the manner and at the time described in Section 59-14-205.

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

(3) The purposes of this equity assessment are:

- (a) to recover health care costs to the state imposed by nonparticipating manufacturers;
- (b) to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers;
- (c) to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement, as defined in Subsection 59-22-202(5);
- (d) to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and
- (e) to fund enforcement and administration of:
 - (i) [~~Section 59-14-408~~] Chapter 14, Part 6, Tobacco Manufacturer Stamping Enforcement Provisions;
 - (ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers; and
 - (iii) the equity assessment imposed by this section.

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

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

Section 5. Section **59-14-601** is enacted to read:

Part 6. Tobacco Manufacturer Stamping Enforcement Provisions

59-14-601. Definitions.

As used in this part:

(1) "Brand family" means:

(a) all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including: "menthol," "lights," "kings," and "100s"; and

(b) any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Cigarette" has the same meaning as in Subsection 59-22-202(4).

(3) "Commission" means the State Tax Commission as defined in Section 59-1-101.

(4) "Distributor" means a person, wherever residing or located, who purchases nontax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.

(5) "Master Settlement Agreement" has the same meaning as in Subsection 59-22-202(5).

(6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(7) "Participating manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.

(8) "Stamping agent" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under Section 59-14-205 or any person that is required to pay the tobacco tax imposed pursuant to Section 59-14-302.

(9) "Qualified Escrow Fund" has the same meaning as defined in Subsection 59-22-202(6).

(10) "Tobacco product manufacturer" has the same meaning as defined in Subsection 59-22-202(9).

(11) "Units sold" has the same meaning as defined in Subsection 59-22-202(10).

Section 6. Section **59-14-602** is enacted to read:

59-14-602. Certifications -- Directories -- Tax stamps.

(1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute

and deliver on a form prescribed by the commission a certification to the attorney general and the commission, no later than April 30th each year, certifying that, as of the date of the certification, the tobacco product manufacturer is either:

(a) a participating manufacturer; or

(b) in full compliance with Sections 59-14-214 and 59-22-203.

(2) A participating manufacturer shall:

(a) include in its certification a list of its brand families; and

(b) update the list 30 calendar days prior to any addition to, or modification of, its brand families by executing and delivering a supplemental certification to the commission and the attorney general.

(3) (a) A nonparticipating manufacturer shall include in its certification:

(i) a list of all of its brand families and the number of units for each brand family that were sold in the state during the preceding calendar year;

(ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year;

(iii) indicating, by an asterisk, any brand family sold in the state by the manufacturer during the preceding calendar year that is no longer being sold in the state by the manufacturer as of the date of the certification;

(iv) identifying by name and address, any other manufacturer of the brand families sold in the state, by the manufacturer submitting the certification, during the preceding or current calendar year;

(v) that the nonparticipating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process and provided notice of the registered agent as required by Section 59-14-605;

(vi) that the nonparticipating manufacturer has:

(A) established and continues to maintain a qualified escrow fund; and

(B) has executed a qualified escrow agreement which:

(I) has been reviewed and approved by the commission; and

(II) governs the qualified escrow fund:

(vii) that the nonparticipating manufacturer is in full compliance with the Model Tobacco Settlement Act and this part, and any regulations promulgated pursuant to the Model Tobacco Settlement Act or this part; and

(viii) the following information concerning the qualified escrow fund:

(A) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer established the qualified escrow fund required by Section 59-22-203;

(B) the account number of the qualified escrow fund and any subaccount number for the state;

(C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year;

(D) the date and amount of each deposit into the fund, and evidence or verification as required by the commission by administrative rule adopted in accordance with Section 59-14-607 as necessary to confirm the information required by Subsection (3)(a); and

(E) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund, or from any other qualified escrow fund into which it ever made escrow payments pursuant to Section 59-22-203.

(b) The nonparticipating manufacturer shall update the list required by this Subsection (3) at least 30 calendar days prior to any addition to, or modification of, its brand families, by executing and delivering a supplemental certification to the commission and the attorney general.

(c) A tobacco product manufacturer subject to this Subsection (3) shall:

(i) deposit the escrow payments required by Sections 59-14-214 and 59-22-203 on a quarterly basis during the year in which the sale occurred; and

(ii) verify the quarterly deposits to the commission in accordance with Subsection (3)(a)(viii)(D).

(4) A tobacco product manufacturer may not include a brand family in the certification required by this section unless:

(a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family will be considered its cigarette for purposes of:

(i) calculating its payments under the Master Settlement Agreement for the relevant year;
and

(ii) calculating the volume and shares determined pursuant to the Master Settlement Agreement; and

(b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family will be considered its cigarette for purposes of Section 59-22-203.

(5) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of Section 59-22-203.

(6) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification required by this section for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

Section 7. Section **59-14-603** is enacted to read:

59-14-603. Directory of cigarettes approved for stamping and sale.

(1) No later than August 30, 2005, the commission shall develop and publish on its website a directory listing:

(a) all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 59-14-602; and

(b) all brand families that are listed in the certifications required by Section 59-14-602, except the commission shall not include or retain in the directory:

(i) the name or brand families of any nonparticipating manufacturer:

(A) who failed to provide the certification required by Section 59-14-602; or

(B) whose certification is determined by the commission to be out of compliance with Section 59-14-602, unless the commission has determined that the violation has been cured to the satisfaction of the commission; or

(ii) a tobacco product manufacturer or brand family of a nonparticipating manufacturer for which the commission determines:

(A) any escrow payment required by Section 59-22-203 for any period, for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement; or

(B) any outstanding final judgment, including interest thereon, for a violation of the Model Tobacco Settlement Act has not been fully satisfied for the brand family or the tobacco product manufacturer.

(2) The commission shall update the directory required by this section as necessary:

(a) to correct mistakes;

(b) to add or remove a tobacco product manufacturer or brand family; and

(c) to keep the directory in conformity with the requirements of this part.

(3) (a) Every stamping agent shall provide to the commission a current and valid electronic mail address for the purpose of receiving notifications from the commission concerning information required by this section and this part.

(b) The stamping agent shall update the electronic mail address as necessary.

(4) A determination by the commission to not include or to remove a brand family or tobacco product manufacturer from the directory required by this section is subject to review in the manner prescribed by Title 63, Chapter 46b, Administrative Procedures Act.

Section 8. Section **59-14-604** is enacted to read:

59-14-604. Prohibition against stamping, sale, or import of cigarettes not in the directory -- Requirement to certify compliance.

(1) It is unlawful for any person:

(a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory required by Section 59-14-603; or

(b) to sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory required by Section 59-14-603.

(2) (a) It is unlawful for any person to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of Section 59-14-603.

(b) A violation of this Subsection (2) is a class B misdemeanor.

Section 9. Section **59-14-605** is enacted to read:

59-14-605. Appointment of agent for service of process.

(1) (a) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory required by Section 59-14-603, appoint and continually engage without interruption the services of an agent in this state.

(b) The agent appointed under Subsection (1)(a) shall:

(i) act as agent for the service of process for any action or proceeding against the nonresident or foreign nonparticipating manufacturer concerning or arising out of the enforcement of this part or the Model Tobacco Settlement Act; and

(ii) may be served in any manner authorized by law.

(c) Service under this Subsection (1) shall constitute legal and valid service of process on the nonparticipating manufacturer.

(2) The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent appointed pursuant to this section to the attorney general and to the commission as established by administrative rule in accordance with Section 59-14-607.

(3) (a) If the nonparticipating manufacturer terminates the authority of an agent appointed under the provisions of this section, the nonparticipating manufacturer shall:

(i) provide notice to the attorney general and to the commission 30 calendar days prior to termination of the authority of an agent; and

(ii) provide proof to the satisfaction of the commission of the appointment of a new agent no less than five calendar days prior to the termination of the existing agent.

(b) If an agent terminates its agency appointment with the nonparticipating manufacturer,

the nonparticipating manufacturer shall notify the attorney general and the commission of the termination within five calendar days of the manufacturer's knowledge of the termination, and shall include proof to the commission of the appointment of a new agent as required by commission rule adopted under Section 59-14-607.

(4) (a) If a nonparticipating manufacturer whose cigarettes are sold in this state does not appoint an agent as required by this section, the Department of Commerce shall serve as the agent for service of process.

(b) A nonparticipating manufacturer who does not appoint an agent as required by this section, and who has the Department of Commerce appointed as the agent for service of process under the provision of Subsection (4)(a), does not satisfy the condition precedent required by Subsection (1)(a), and may not be included in the directory created in Section 59-14-603.

Section 10. Section **59-14-606** is enacted to read:

59-14-606. Reporting by stamping agents.

(1) A stamping agent shall submit the following information to the commission not later than 30 calendar days after the end of each calendar quarter, or more frequently if required by the commission by administrative rule in accordance with Section 59-14-607:

(a) a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the reporting period;

(b) the equivalent stick count for roll your own tobacco, for which the stamping agent paid the tobacco product tax during the reporting period;

(c) the equivalent total number of cigarettes or stick count for which the stamping agent paid taxes for the reporting period; and

(d) any other information the commission determines is necessary to enforce this part.

(2) The stamping agent shall maintain, and make available to the commission, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the commission for a period of five years.

(3) The commission may share information received under this part with federal, state, or local agencies as necessary for enforcement of this part, the Model Tobacco Settlement Act, or

corresponding laws of other states.

(4) For purposes of complying with the Model Tobacco Settlement Act, the commission may require, at any time, from the nonparticipating manufacturer and from the financial institution in which the manufacturer has established a qualified escrow fund, proof of:

(a) the amount of money in the fund, exclusive of interest;

(b) the amount and date of each deposit to the fund; and

(c) the amount and date of each withdrawal from the fund.

(5) In addition to the information required to be submitted pursuant to Sections 59-14-214 and 59-22-203 and this part, the commission may require by administrative rule adopted pursuant to Section 59-14-607, a stamping agent or tobacco product manufacturer to submit any additional information including samples of the packaging or labeling of each brand family, as is necessary to enable the commission to determine whether a tobacco product manufacturer is in compliance with this part.

(6) No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless the person has certified in writing, under penalty of perjury, that the person will comply fully with this part.

Section 11. Section **59-14-607** is enacted to read:

59-14-607. Administrative rulemaking authority.

(1) The commission may promulgate administrative rules as necessary to enforce the provisions of this part.

(2) The rules authorized by this part include rules:

(a) to verify information concerning the escrow deposits required by Section 59-14-602;

(b) regarding the production of information sufficient to enable the commission to determine the adequacy of the amount of the installment deposit required by this part;

(c) regarding the certification required by Section 59-14-602;

(d) necessary to receive and publish information for the directory required by Section 59-14-603;

(e) regarding the notification requirements for the appointment of an agent for service of

process in Section 59-14-605;

(f) for reporting by stamping agents or manufacturers of tobacco products under Section 59-14-606; and

(g) as authorized by this part or the Master Settlement Agreement.

Section 12. Section **59-14-608** is enacted to read:

59-14-608. License revocation and penalties.

(1) (a) The commission may revoke or suspend the license of a stamping agent in the manner provided in Section 59-14-202 if the commission determines that the stamping agent has violated Sections 59-14-604, 59-14-606, or other rule adopted under the provisions of this part.

(b) The penalty imposed under Subsection (1)(a) is in addition to or in lieu of any other civil or criminal remedy provided by law.

(c) Each stamp affixed and each sale or offer to sell cigarettes in violation of Section 59-14-604, or other rule adopted under the provisions of this part, shall constitute a separate violation.

(d) For each violation under Subsection (1)(c), the commissioner may, in addition to the penalty imposed by Subsection (1)(a), impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000.

(2) (a) Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, or imported for personal consumption in this state, in violation of Section 59-14-604 are:

(i) contraband under Section 59-14-213; and

(ii) subject to seizure and forfeiture as provided in Section 59-14-213.

(b) Cigarettes seized and forfeited under the provisions of this section shall be destroyed and not resold.

(3) (a) The commission may seek an injunction to:

(i) restrain a threatened or actual violation of this part by a stamping agent; or

(ii) to compel the stamping agent to comply with this part.

(b) In any action brought pursuant to this section, the state is entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(4) A person who violates Section 59-14-604 engages in an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act.

Section 13. Section **59-14-609** is enacted to read:

59-14-609. Effective dates for reporting -- Disgorgement of profits -- Recovery of costs.

(1) The first report of the stamping agents required by this part are due by June 15, 2005. The first certifications of the tobacco product manufacturers required by this part are due June 30, 2005. The directory required by this part shall be published by the commission no later than August 30, 2005.

(2) In any action brought by the state to enforce this part, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(3) (a) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the State Treasurer for deposit in the Tobacco Control Restricted Account which is created in Section 59-14-610.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Section 14. Section **59-14-610** is enacted to read:

59-14-610. Creation of Tobacco Control Restricted Account.

(1) There is created within the General Fund a restricted account known as the Tobacco Control Restricted Account.

(2) The Tobacco Control Restricted Account consists of:

(a) all profits, gains, gross receipts, or other benefits ordered to be disgorged by the court under the provisions of Subsection 59-14-609(3); and

(b) interest on account monies.

(3) Upon appropriations by the Legislature, monies from the account shall be used for the

enforcement of this part and the Master Settlement Agreement.

Section 15. Section **59-14-611** is enacted to read:

59-14-611. Severability clause.

If a court of competent jurisdiction finds that the provisions of this part and of the Model Tobacco Settlement Act conflict and cannot be harmonized, then the provisions of the Model Tobacco Settlement Act shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part causes the Model Tobacco Settlement Act to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this part shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this part.

Section 16. **Repealer.**

This bill repeals:

Section **59-14-408, Compliance certification -- Prohibition on stamping.**

Section 17. **Legislative intent.**

The Legislature finds that violations of the Model Tobacco Settlement Act (Sections 59-22-202 et seq.) threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The Legislature finds that enacting procedural enhancements will help prevent violations and aid the enforcement of the Model Tobacco Settlement Act and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.