

1 **MOIST SNUFF TAXATION REVISIONS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Bradley M. Daw**

5 Senate Sponsor: Curtis S. Bramble

6 Cosponsors:
7 Trisha S. Beck

Laura Black

Rebecca D. Lockhart

8
9 **LONG TITLE**

10 **General Description:**

11 This bill amends provisions of the Cigarette and Tobacco Tax and Licensing Act
12 relating to "moist snuff."

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ amends the definition of "moist snuff";
- 16 ▶ requires that a manufacturer who distributes a tobacco product in, or into, Utah,
17 shall:
 - 18 • keep valid scientific evidence of the moisture content of the tobacco product
19 available for review by the Tax Commission (commission), upon demand; and
 - 20 • provide a document to the person to whom the manufacturer distributes the
21 tobacco product, that certifies the moisture content of the tobacco product;
 - 22 ▶ provides that a manufacturer who fails to comply with the requirements described
23 in the preceding paragraph is liable for the nonpayment or underpayment of taxes
24 on the tobacco product by a person who relies, in good faith, on the document;
 - 25 ▶ requires a person who is required to pay tax on a tobacco product to keep the
26 document, provided by the manufacturer that certifies moisture content of the
27 tobacco product, available for review by the commission, on demand;
 - 28 ▶ provides that a person who is required to pay tax on a tobacco product is not liable
29 for nonpayment or underpayment of taxes on the tobacco product due to the

30 person's good faith reliance on the document; and

31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **59-14-102**, as last amended by Laws of Utah 2008, Chapter 204

39 **59-14-302**, as last amended by Laws of Utah 2008, Chapter 204



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

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

43 **59-14-102. Definitions.**

44 As used in this chapter:

45 (1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

46 (a) regardless of:

47 (i) the size of the roll;

48 (ii) the shape of the roll; or

49 (iii) whether the tobacco is:

50 (A) flavored;

51 (B) adulterated; or

52 (C) mixed with any other ingredient; and

53 (b) if the wrapper or cover of the roll is made of paper or any other substance or

54 material except tobacco.

55 (2) "Consumer" means a person that is not required:

56 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or

57 (b) under Section 59-14-301 to obtain a license under Section 59-14-202.

- 58 (3) "Counterfeit cigarette" means:
- 59 (a) a cigarette that has a false manufacturing label; or
- 60 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 61 (4) "Importer" means a person who imports into the United States, either directly or
- 62 indirectly, a finished cigarette for sale or distribution.
- 63 (5) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
- 64 other person doing business as a distributor or retailer of cigarettes on tribal lands located in
- 65 the state.
- 66 (6) "Manufacturer" means a person who manufactures, fabricates, assembles,
- 67 processes, or labels a finished cigarette.
- 68 (7) "Moist snuff" means tobacco that [is]:
- 69 (a) is finely:
- 70 (i) cut;
- 71 (ii) ground; or
- 72 (iii) powdered; [~~and~~]
- 73 (b) has at least 45% moisture content, as determined by the commission by rule made
- 74 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 75 [~~(b)~~] (c) is not intended to be:
- 76 (i) smoked; or
- 77 (ii) placed in the nasal cavity[-]; and
- 78 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
- 79 distributed in single-use units, including:
- 80 (i) tablets;
- 81 (ii) lozenges;
- 82 (iii) strips;
- 83 (iv) sticks; or
- 84 (v) packages containing multiple single-use units.
- 85 (8) "Retailer" means a person that:

- 86 (a) sells or distributes a cigarette to a consumer in the state; or
- 87 (b) intends to sell or distribute a cigarette to a consumer in the state.
- 88 (9) "Stamp" means the indicia required to be placed on a cigarette package that
- 89 evidences payment of the tax on cigarettes required by Section 59-14-205.
- 90 (10) (a) "Tobacco product" means a product made of, or containing tobacco.
- 91 (b) "Tobacco product" includes moist snuff.
- 92 (c) "Tobacco product" does not include a cigarette.
- 93 (11) "Tribal lands" means land held by the United States in trust for a federally
- 94 recognized Indian tribe.

95 Section 2. Section **59-14-302** is amended to read:

96 **59-14-302. Tax basis -- Rates.**

97 (1) As used in this section:

98 (a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco

99 product charges after subtracting a discount.

100 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,

101 regardless of:

- 102 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or
- 103 (ii) who pays the original Utah destination freight charge.

104 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.

105 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,

106 distributor, wholesaler, retailer, user, or consumer.

107 (4) The rate of the tax under this section is:

108 (a) for tobacco products except for moist snuff, 35% of the manufacturer's sales price;

109 or

110 (b) subject to Subsection (5), for moist snuff, \$.75 per ounce.

111 (5) (a) The tax under this section on moist snuff shall be imposed on the basis of the

112 net weight of the moist snuff as listed by the manufacturer.

113 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one

114 ounce, a proportionate amount of the tax described in Subsection (4)(b) is imposed:

115 (i) on that fractional part of one ounce; and

116 (ii) in accordance with rules made by the commission in accordance with Title 63G,
117 Chapter 3, Utah Administrative Rulemaking Act.

118 (6) (a) Moisture content of a tobacco product is determined at the time of packaging.

119 (b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

120 (i) for a period of three years after the last day on which the manufacturer distributes
121 the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of
122 the tobacco product available for review by the commission, upon demand; and

123 (ii) provide a document, to the person described in Subsection (3) to whom the
124 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco
125 product, as verified by the scientific evidence described in Subsection (6)(b)(i).

126 (c) A manufacturer who fails to comply with the requirements of Subsection (6)(b) is
127 liable for the nonpayment or underpayment of taxes on the tobacco product by a person who
128 relies, in good faith, on the document described in Subsection (6)(b)(ii).

129 (d) A person described in Subsection (3) who is required to pay tax on a tobacco
130 product:

131 (i) shall, for a period of three years after the last day on which the person pays the tax
132 on the tobacco product, keep the document described in Subsection (6)(b)(ii) available for
133 review by the commission, upon demand; and

134 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
135 to the person's good faith reliance on the document described in Subsection (6)(b)(ii).