

Representative Bradley M. Daw proposes the following substitute bill:

MOIST SNUFF TAXATION REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Curtis S. Bramble

Cosponsors: Laura Black Rebecca D. Lockhart
Trisha S. Beck

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends the definition of "moist snuff";
- ▶ requires that a manufacturer who distributes a tobacco product in, or into, Utah, shall:
 - keep valid scientific evidence of the moisture content of the tobacco product available for review by the Tax Commission (commission), upon demand; and
 - provide a document to the person to whom the manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco product;
 - ▶ provides that a manufacturer who fails to comply with the requirements described in the preceding paragraph is liable for the nonpayment or underpayment of taxes on the tobacco product by a person who relies, in good faith, on the document;
 - ▶ 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 tobacco product,
27 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 person's
30 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 the
65 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) is not packaged, produced, sold, or distributed in single-use units, including:

79 (i) tablets;

80 (ii) lozenges;

81 (iii) strips;

82 (iv) sticks;

83 (v) pouches; or

84 (vi) 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 ounce,
114 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) keep valid scientific evidence of the moisture content of the tobacco product
121 available for review by the commission, upon demand; and
122 (ii) provide a document, to the person described in Subsection (3) to whom the
123 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco
124 product, as verified by the scientific evidence described in Subsection (6)(b)(i).
125 (c) A manufacturer who fails to comply with the requirements of Subsection (6)(b) is
126 liable for the nonpayment or underpayment of taxes on the tobacco product by a person who
127 relies, in good faith, on the document described in Subsection (6)(b)(ii).
128 (d) A person described in Subsection (3) who is required to pay tax on a tobacco
129 product:
130 (i) shall keep the document described in Subsection (6)(b)(ii) available for review by
131 the commission, upon demand; and
132 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
133 to the person's good faith reliance on the document described in Subsection (6)(b)(ii).

H.B. 92 1st Sub. (Buff) - Moist Snuff Taxation Revisions

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
