

1                   **TOBACCO RELATED PENALTY AMENDMENTS**

2                                   2011 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Paul Ray**

5                                   Senate Sponsor: Allen M. Christensen

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill amends penalty provisions of the Cigarette and Tobacco Tax and Licensing  
10 Act.

11                   **Highlighted Provisions:**

12                   This bill:

13                   ▶ permits the Tax Commission to waive, reduce, or compromise certain penalties;  
14                   ▶ provides that a person who fails to timely file certain reports relating to the taxation  
15 of tobacco, or who provides false or misleading information on, or in relation to, a  
16 report:

- 17                   • is guilty of a class B misdemeanor; and
- 18                   • is subject to revocation or suspension of a license and a civil penalty imposed by  
19 the commission; and
- 20                   ▶ makes technical changes.

21                   **Money Appropriated in this Bill:**

22                   None

23                   **Other Special Clauses:**

24                   None

25                   **Utah Code Sections Affected:**

26                   AMENDS:

27                   **59-14-214**, as last amended by Laws of Utah 2005, Chapter 204

28                   **59-14-407**, as last amended by Laws of Utah 2008, Chapter 382

29                   **59-14-606**, as enacted by Laws of Utah 2005, Chapter 204

30 ENACTS:

31 **59-14-103**, Utah Code Annotated 1953



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

34 Section 1. Section **59-14-103** is enacted to read:

35 **59-14-103. Waiver or reduction of penalty.**

36 The commission may, upon making a record of its actions, and upon reasonable cause  
37 shown, waive, reduce, or compromise any of the penalties or interest imposed under:

38 (1) Subsection 59-14-212(4)(b)(ii);

39 (2) Subsection 59-14-214(5)(b)(ii);

40 (3) Subsection 59-14-407(5)(b)(ii);

41 (4) Subsection 59-14-606(7)(b)(ii); or

42 (5) Subsection 59-14-608(1)(d).

43 Section 2. Section **59-14-214** is amended to read:

44 **59-14-214. Nonparticipating manufacturer equity assessment.**

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

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

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

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

56 (d) Except as otherwise provided in this section, the equity assessment shall be  
57 collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied

58 by Section 59-14-204.

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

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

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

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

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

69 (e) to fund enforcement and administration of:

70 (i) Chapter 14, Part 6, Tobacco Manufacturer Stamping Enforcement Provisions;

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

72 and

73 (iii) the equity assessment imposed by this section.

74 (4) [~~(a)~~] Each manufacturer, distributor, wholesaler, or retail dealer who under Section  
75 59-14-205 affixes a stamp to a package of cigarettes, shall report monthly to the commission  
76 for each place of business, the number and denominations of stamps affixed to individual  
77 packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor,  
78 wholesaler, or retail dealer in the preceding month, including the manufacturer and brand  
79 family.

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

83 (5) A person required to file a report under this section who fails to timely file the  
84 report, or who provides false or misleading information on, or in relation to, the report:

85 (a) is guilty of a class B misdemeanor; and

- 86 (b) is subject to:
- 87 (i) revocation or suspension of a license under Part 2, Cigarettes; and
- 88 (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the
- 89 greater of:
- 90 (A) 500% of the retail value of the cigarettes for which an accurate report was not
- 91 filed; or
- 92 (B) \$5,000.

Section 3. Section **59-14-407** is amended to read:

**59-14-407. Reporting of manufacturer name.**

(1) As used in this section:

(a) "Cigarette" has the same meaning as defined in Section 59-22-202.

(b) "Tobacco product manufacturer" has the same meaning as defined in Section 59-22-202.

(2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report quarterly to the commission:

(a) the quantity of cigarettes in the package or container; and

(b) the name of the manufacturer of the cigarettes.

(3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette under Section 59-22-202 and manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report quarterly to the commission:

(a) the quantity of cigarettes upon which the tax is levied; and

(b) the name of the manufacturer of each cigarette.

(4) [~~(a)~~] The reports under Subsections (2) and (3) shall be made no later than quarterly on or before the last day of the month following each calendar quarterly period pursuant to

114 rules established by the commission in accordance with Title 63G, Chapter 3, Utah  
115 Administrative Rulemaking Act.

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

119 (5) A person required to file a report under this section who fails to timely file the  
120 report, or who provides false or misleading information on, or in relation to, the report:

121 (a) is guilty of a class B misdemeanor; and

122 (b) is subject to:

123 (i) revocation or suspension of a license under Part 2, Cigarettes, and Part 3, Tobacco  
124 Products; and

125 (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the  
126 greater of:

127 (A) 500% of the retail value of the cigarettes and tobacco products for which an  
128 accurate report was not filed; or

129 (B) \$5,000.

130 Section 4. Section **59-14-606** is amended to read:

131 **59-14-606. Reporting by stamping agents.**

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

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

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

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

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

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

145 (3) The commission may share information received under this part with federal, state,  
146 or local agencies as necessary for enforcement of this part, the Model Tobacco Settlement Act,  
147 or corresponding laws of other states.

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

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

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

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

155 (5) In addition to the information required to be submitted pursuant to Sections  
156 59-14-214 and 59-22-203 and this part, the commission may require by administrative rule  
157 adopted pursuant to Section 59-14-607, a stamping agent or tobacco product manufacturer to  
158 submit any additional information including samples of the packaging or labeling of each brand  
159 family, as is necessary to enable the commission to determine whether a tobacco product  
160 manufacturer is in compliance with this part.

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

164 (7) A person required to file a report under this section who fails to timely file the  
165 report, or who provides false or misleading information on, or in relation to, the report:

166 (a) is guilty of a class B misdemeanor; and

167 (b) is subject to:

168 (i) revocation or suspension of a license under Part 2, Cigarettes; and

169 (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the

170 greater of:

171 (A) 500% of the retail value of the cigarettes for which an accurate report was not

172 filed; or

173 (B) \$5,000.

