

1 **CIGARETTE AND TOBACCO**

2 **AMENDMENTS**

3 2024 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Joseph Elison**

6 Senate Sponsor: Curtis S. Bramble

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions addressing cigarettes, tobacco, and electronic cigarettes.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires a person that has to file a report with the State Tax Commission in
14 accordance with the federal Prevent All Cigarette Trafficking Act regarding
15 cigarettes, tobacco, and electronic cigarettes transferred into the state to file the
16 report electronically; and

17 ▶ modifies the definition of "units sold," for purposes of the tobacco Master
18 Settlement Agreement, to include products sold by a distributor, retailer, or
19 intermediary and to give the State Tax Commission rulemaking authority to
20 determine the number of units sold in the state.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 This bill provides retrospective operation.

26 **Utah Code Sections Affected:**

27 AMENDS:

28 [59-22-202](#), as last amended by Laws of Utah 2016, Chapter 348

29 ENACTS:

30 **59-14-105**, Utah Code Annotated 1953

31

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

33 Section 1. Section **59-14-105** is enacted to read:

34 **59-14-105. Electronic reporting of report on product transferred into the state.**

35 A person that is required to file a report with the commission in accordance with 15

36 U.S.C. Sec. 376 shall file the report electronically in a format approved by the commission.

37 Section 2. Section **59-22-202** is amended to read:

38 **59-22-202. Definitions.**

39 As used in this part:

40 (1) "Adjusted for inflation" means increased in accordance with the formula for
41 inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

42 (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or
43 controlled by, or is under common ownership or control with, another person. Solely for
44 purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of
45 an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an
46 individual, partnership, committee, association, corporation, or any other organization or group
47 of persons.

48 (3) "Allocable share" means Allocable Share as that term is defined in the Master
49 Settlement Agreement.

50 (4) "Cigarette" means any product that contains nicotine, is intended to be burned or
51 heated under ordinary conditions of use, and consists of or contains:

52 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

53 (b) tobacco, in any form, that is functional in the product, which, because of its
54 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be
55 offered to, or purchased by, consumers as a cigarette; or

56 (c) any roll of tobacco wrapped in any substance containing tobacco that, because of its
57 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be
58 offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition.
59 The term "cigarette" includes "roll-your-own" (i.e., any tobacco that, because of its appearance,
60 type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by,
61 consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette,"
62 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

63 (5) "Master Settlement Agreement" means the settlement agreement (and related
64 documents) entered into on November 23, 1998, by the State and leading United States tobacco
65 product manufacturers.

66 (6) "Qualified escrow fund" means an escrow arrangement with a federally or State
67 chartered financial institution having no affiliation with any tobacco product manufacturer and
68 having assets of at least \$1,000,000,000 where such arrangement requires that such financial
69 institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits
70 the tobacco product manufacturer placing the funds into escrow from using, accessing, or
71 directing the use of the funds' principal except as consistent with Subsection 59-22-203(2).

72 (7) "Released claims" means Released Claims as that term is defined in the Master
73 Settlement Agreement.

74 (8) "Releasing parties" means Releasing Parties as that term is defined in the Master
75 Settlement Agreement.

76 (9) (a) "Tobacco product manufacturer" means an entity that after the date of enactment
77 of this Act directly (and not exclusively through any affiliate):

78 (i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the
79 United States, including cigarettes intended to be sold in the United States through an importer
80 (except where such importer is an original participating manufacturer (as that term is defined in
81 the Master Settlement Agreement) that will be responsible for the payments under the Master
82 Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection

83 II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection
84 II(z) of the Master Settlement Agreement, and provided that the manufacturer of such
85 cigarettes does not market or advertise such cigarettes in the United States);

86 (ii) is the first purchaser anywhere for resale in the United States of cigarettes
87 manufactured anywhere that the manufacturer does not intend to be sold in the United States;
88 or

89 (iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

90 (b) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product
91 manufacturer unless such affiliate itself falls within any Subsection (9)(a)(i) through (iii).

92 (10) (a) "Units sold" means the number of individual cigarettes sold in the [State] state
93 by [the] an applicable tobacco product manufacturer [~~whether directly or through a distributor,~~
94 ~~retailer or similar intermediary or intermediaries~~] during the year in question, as measured by
95 ~~excise taxes collected by the State on packs (or "roll-your-own" tobacco containers)]~~ during the
96 year in question for which the state is not prohibited from taxing under federal law.

97 (b) "Units sold" includes a cigarette or "roll your own" tobacco product sold by a
98 tobacco product manufacturer through a distributor, a retailer, or a similar intermediary.

99 (c) The State Tax Commission [~~shall promulgate such regulations as are necessary to~~
100 ~~ascertain the amount of State excise tax paid on the cigarettes of such tobacco product~~
101 ~~manufacturer for each year]~~ may make rules establishing how to determine the number of units
102 sold in the state.

103 Section 3. **Effective date.**

104 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
105 elected to each house, this bill takes effect upon approval by the governor, or the day following
106 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
107 signature, or in the case of a veto, the date of veto override.

108 (2) The actions affecting Section [59-14-105](#) take effect on July 1, 2024.

109 Section 4. **Retrospective operation.**

110 Section 59-22-202, Effective upon governor's approval, provides retrospective
111 operation to January 1, 2024.