



28 (a) means a sale of cigarettes to an individual in the state who:  
29 (i) is not a wholesaler, distributor, or retailer; and  
30 (ii) (A) submits the order for purchase of the cigarettes by means of:  
31 (I) telephone or other method of voice transmission;  
32 (II) delivery service; or  
33 (III) the Internet or other online service; or  
34 (B) receives the cigarettes by delivery service; and  
35 (b) includes sales under Subsection (1)(a) by persons located on Indian lands or outside  
36 the state.

37 (2) "Delivery service" means a person, including the United States Postal Service,  
38 engaged in the commercial delivery of letters, packages, or other containers.

39 (3) "Shipping container" means a container in which cigarettes are delivered in  
40 connection with a delivery sale.

41 (4) "Shipping document" means a bill of lading, an air bill, a United States Postal  
42 Service form, or other document used to evidence the undertaking by a delivery service to  
43 deliver a letter, package, or other container.

44 Section 2. Section **59-14-602** is enacted to read:

45 **59-14-602. Disclosure and age verification.**

46 (1) A person may not cause a delivery sale to be made by a delivery service to an  
47 individual under 19 years of age.

48 (2) A person may not cause cigarettes to be delivered by a delivery service in  
49 connection with a delivery sale order unless the person accepting the order first:

50 (a) sends to the prospective purchaser via e-mail or other means:

51 (i) a notice which includes prominent and clearly legible statements that:

52 (A) cigarette sales to persons under 19 years of age are illegal;

53 (B) consist of one of the warnings in 15 U.S.C. Sec. 1333(a)(1), rotated quarterly;

54 (C) sales of cigarettes may be made only to individuals who provide verifiable proof of  
55 age; and

56 (D) cigarettes are taxable under Section 59-14-204 and explains how that tax has been  
57 or will be paid on the delivery sale; and

58 (ii) a request for confirmation that the delivery sale order was placed by the prospective

59 purchaser;

60 (b) obtains from the prospective purchaser a certification which includes:

61 (i) reliable confirmation that the prospective purchaser is not under 19 years of age;

62 and

63 (ii) a statement signed by the prospective purchaser under penalty of perjury which:

64 (A) certifies the prospective purchaser's address and date of birth; and

65 (B) confirms that the prospective purchaser understands that:

66 (I) signing another person's name to the certification is illegal;

67 (II) the sale of cigarettes to persons under 19 years of age is illegal under Section

68 76-10-104; and

69 (III) the purchase of cigarettes by a person under 19 years of age is illegal under

70 Section 76-10-105;

71 (c) makes a good-faith effort to verify the information in the certification under

72 Subsection (2)(b) by comparing it with information compiled:

73 (i) commercially; or

74 (ii) by the federal government for this purpose;

75 (d) receives from the prospective purchaser confirmation pursuant to the request

76 described in Subsection (2)(a)(ii) that the prospective purchaser placed the delivery sale order;

77 and

78 (e) receives payment for the delivery sale by a credit or debit card in the name of the

79 prospective purchaser.

80 (3) A person accepting a delivery sale order may request the e-mail address of the

81 prospective purchaser.

82 Section 3. Section **59-14-603** is enacted to read:

83 **59-14-603. Shipping requirements.**

84 A person who causes a delivery service to deliver cigarettes in connection with a

85 delivery sale order shall:

86 (1) include as part of the shipping documents the following statement, clearly and

87 conspicuously displayed: "CIGARETTES: UTAH LAW PROHIBITS THE SHIPPING OF

88 CIGARETTES TO INDIVIDUALS UNDER 19 YEARS OF AGE AND REQUIRES THE

89 PAYMENT OF ALL APPLICABLE TAXES";

- 90 (2) use a method of delivery that obligates the delivery service to require:
- 91 (a) the purchaser who placed the delivery sale order, or a person 19 years of age or
- 92 older designated by the purchaser, to sign to accept delivery of the shipping container;
- 93 (b) proof, in the form of a valid government issued identification bearing a photograph
- 94 of the individual who signs to accept delivery of the shipping container, demonstrating that the
- 95 individual is:
- 96 (i) (A) the purchaser who placed the delivery sale order; or
- 97 (B) a person 19 years of age or older designated by the purchaser; and
- 98 (ii) not under 19 years of age, if the person appears to be under 27 years of age; and
- 99 (3) provide to the delivery service evidence that the cigarette packages or cigarette
- 100 containers bear the tax stamps required under Section 59-14-205.

101 Section 4. Section **59-14-604** is enacted to read:

102 **59-14-604. Registration and reporting requirements.**

103 (1) (a) A person may not make delivery sales unless prior to making delivery sales the

104 person registers with the commission the person's:

- 105 (i) name;
- 106 (ii) trade name;
- 107 (iii) principal place of business address; and
- 108 (iv) any other place of business address.

109 (b) A delivery service may not deliver cigarettes in connection with delivery sales

110 unless prior to delivering cigarettes the delivery service registers with the commission the

111 delivery service's:

- 112 (i) name;
- 113 (ii) trade name;
- 114 (iii) principal place of business address; and
- 115 (iv) any other place of business address.

116 (2) (a) On or before the tenth day of each month:

117 (i) A person making delivery sales shall report to the commission the following

118 information on each delivery sale made during the previous month:

- 119 (A) the name and address of each individual to whom the delivery sale was made; and
- 120 (B) the quantity of each brand of cigarettes sold in the delivery sale.

121 (ii) A delivery service delivering cigarettes in connection with delivery sales shall  
122 report to the commission the following information on each of those deliveries made during the  
123 previous month:

124 (A) the name and address of each individual to whom the delivery was made; and

125 (B) the quantity of each brand of cigarettes sold in the delivery sale.

126 (b) Persons making delivery sales and delivery services may satisfy the reporting  
127 requirements of Subsection (2)(a) by submitting copies of invoices to the commission.

128 Section 5. Section **59-14-605** is enacted to read:

129 **59-14-605. Payment of taxes required.**

130 A person may not cause cigarettes to be delivered by a delivery service in connection  
131 with a delivery sale unless the tax under Section 59-14-202 has been paid as evidenced by a tax  
132 stamp on the cigarette packages or cigarette containers to be delivered.

133 Section 6. Section **59-14-606** is enacted to read:

134 **59-14-606. Deliverer requirements.**

135 (1) (a) A delivery service may not make any delivery it has reason to know is a delivery  
136 sale unless the delivery service:

137 (i) has registered with the commission under Subsection 59-14-604(1)(b);

138 (ii) has received the evidence required under Subsection 59-14-603(3); and

139 (iii) complies with the requirements of Subsection 59-104-603(2).

140 (b) For purposes of Subsection (2)(a), a delivery service has reason to know a delivery  
141 is a delivery sale if:

142 (i) the delivery is made pursuant to shipping documents containing the statement  
143 described in Subsection 59-14-603(1);

144 (ii) the delivery service is obligated by the person causing the delivery to be made to  
145 meet the requirements of Section 59-14-603(2); or

146 (iii) the delivery service otherwise has reason to know that the shipping container  
147 contains cigarettes.

148 (2) If a sale would otherwise be a delivery sale, except that the delivery is made by the  
149 person accepting the order rather than a delivery service:

150 (a) the sale shall be considered a delivery sale under this part; and

151 (b) the person accepting the order shall comply with the requirements imposed on

152 delivery services under this part.

153 Section 7. Section **59-14-607** is enacted to read:

154 **59-14-607. Penalties and forfeiture.**

155 (1) (a) A person who violates the provisions of this part shall be fined:

156 (i) in the case of a first violation, the greater of:

157 (A) \$1,000; or

158 (B) five times the retail value of the cigarettes involved; and

159 (ii) in the case of a second or subsequent violation, the greater of:

160 (A) \$5,000; or

161 (B) five times the retail value of the cigarettes involved; and

162 (b) A person who intentionally violates the provisions of this part, including falsely

163 submitting a certification in the name of another person under Subsection 59-14-602(2)(b),

164 shall be for each violation:

165 (i) fined the greater of:

166 (A) \$10,000; or

167 (B) five times the retail value of the cigarettes involved;

168 (ii) imprisoned not more than five years; or

169 (iii) fined and imprisoned under Subsections (1)(b)(i) and (ii).

170 (c) In addition to the penalties under Subsections (1)(a) and (1)(b), a person who fails

171 to pay any tax required under this part in connection with a delivery sale shall be fined an

172 amount equal to five times the amount of the tax due but unpaid.

173 (2) (a) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet  
174 the requirements of this part shall be forfeited to the state and destroyed.

175 (b) All fixtures, equipment, material, and other personal property on the premises of  
176 any person who with intent to defraud fails to satisfy the requirements of this part shall be  
177 forfeited to the state.

178 Section 8. Section **59-14-608** is enacted to read:

179 **59-14-608. Enforcement.**

180 The attorney general or any person who holds a permit under 26 U.S.C. Sec. 5712 may  
181 bring an action in court to prevent or restrain violations of this part.

182 Section 9. **Effective date.**

This act takes effect on July 1, 2003.

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**Legislative Review Note****as of 2-25-03 10:49 AM**

This bill regulates mail order and Internet sales of tobacco to minors in the state, including minors located on Indian lands. The bill imposes the state's tax stamp on the Internet or mail order sales to minors in the state and on Indian lands located in the state. The U.S. Supreme Court has traditionally held that under the Commerce and Due Process Clauses a state may not impose a tax on a taxpayer unless the taxpayer has sufficient contacts with the state. There may be an issue regarding whether the tax imposed by this bill meets the sufficient contacts standards required by the Commerce and Due Process clauses of the United States Constitution.

Case law surrounding state regulation of Internet activities is evolving. State regulation of Internet activities have been challenged as violating constitutional principals such as the Commerce Clause of the United States Constitution. At least one court has indicated that in considering state laws that directly regulate Internet activities, the need for national uniformity might limit a state's ability to regulate those activities. If the regulation of Internet activities is incidental to the regulation of other activities and no distinction is made between in state and out of state providers, some courts have upheld the constitutionality of the regulation. It would be for a court to decide whether this bill is unconstitutional as the bill does not impose a greater burden on out of state Internet or mail order sales than is imposed on instate Internet or mail order sales and regulates only sales to residents of the state.

U.S. Supreme Court case law indicates that a state may impose a non-discriminatory tax on non-Indian customers of Indian retailers doing business on an Indian reservation. The application of this bill does not distinguish between non-Indian and Indian customers and therefore may have constitutional concerns. The reporting requirements in this bill also apply to Indian and non-Indian customers.

**Office of Legislative Research and General Counsel**

**State Impact**

The Tax Commission would require an appropriation of \$140,700 in FY 2003 and an appropriation of \$36,300 in FY 2004 to implement the provisions of the bill. Passage of this bill could increase the General Fund by \$344,000 in FY 2004 and by \$688,000 in FY 2005.

	<u>FY 03 Approp.</u>	<u>FY 04 Approp.</u>	<u>FY 03 Revenue</u>	<u>FY 04 Revenue</u>
General Fund	\$140,700	\$36,300	\$0	\$344,000
	<b>\$140,700</b>	<b>\$36,300</b>	<b>\$0</b>	<b>\$344,000</b>

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**Individual and Business Impact**

No significant fiscal impact.

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