

Representative Eric K. Hutchings proposes the following substitute bill:

DELIVERY SALES OF CIGARETTES

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Eric K. Hutchings

This act amends the Cigarette and Tobacco Tax and Licensing Act. The act defines “delivery sale” and provides other definitions. The act provides that a person making a delivery sale order, accepting the order, making the delivery, or accepting the delivery meet specified requirements. The act provides penalties and requires forfeiture of cigarettes and personal property under certain circumstances. The act specifies who may file a court action to prevent or restrain violation of the act. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

59-14-601, Utah Code Annotated 1953

59-14-602, Utah Code Annotated 1953

59-14-603, Utah Code Annotated 1953

59-14-604, Utah Code Annotated 1953

59-14-605, Utah Code Annotated 1953

59-14-606, Utah Code Annotated 1953

59-14-607, Utah Code Annotated 1953

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

Section 1. Section **59-14-601** is enacted to read:

Part 6. Delivery Sales of Cigarettes

59-14-601. Definitions.

As used in this part:



- 26 (1) "Delivery sale" means a sale of cigarettes to an individual in the state who:
27 (a) is not a wholesaler, distributor, or retailer; and
28 (b) submits the order for purchase of the cigarettes by means of:
29 (i) telephone or other method of voice transmission;
30 (ii) delivery service; or
31 (iii) the Internet or other online service; and
32 (c) receives the cigarettes by delivery service.

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

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

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

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

41 **59-14-602. Disclosure and age verification.**

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

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

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

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

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

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

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

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

54 (ii) a request for confirmation that the delivery sale order was placed by the prospective
55 purchaser;

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

57 (i) reliable confirmation that the prospective purchaser is not under 19 years of age;
58 and
59 (ii) a statement signed by the prospective purchaser under penalty of perjury which:
60 (A) certifies the prospective purchaser's address and date of birth; and
61 (B) confirms that the prospective purchaser understands that:
62 (I) signing another person's name to the certification is illegal;
63 (II) the sale of cigarettes to persons under 19 years of age is illegal under Section
64 76-10-104; and
65 (III) the purchase of cigarettes by a person under 19 years of age is illegal under
66 Section 76-10-105;
67 (c) makes a good-faith effort to verify the information in the certification under
68 Subsection (2)(b) by comparing it with information compiled:
69 (i) commercially; or
70 (ii) by the federal government for this purpose;
71 (d) receives from the prospective purchaser confirmation pursuant to the request
72 described in Subsection (2)(a)(ii) that the prospective purchaser placed the delivery sale order;
73 and
74 (e) receives payment for the delivery sale by a credit or debit card in the name of the
75 prospective purchaser.
76 (3) A person accepting a delivery sale order may request the e-mail address of the
77 prospective purchaser.
78 Section 3. Section **59-14-603** is enacted to read:
79 **59-14-603. Shipping requirements.**
80 A person who causes a delivery service to deliver cigarettes in connection with a
81 delivery sale order shall:
82 (1) include as part of the shipping documents the following statement, clearly and
83 conspicuously displayed: "CIGARETTES: UTAH LAW PROHIBITS THE SHIPPING OF
84 CIGARETTES TO INDIVIDUALS UNDER 19 YEARS OF AGE AND REQUIRES THE
85 PAYMENT OF ALL APPLICABLE TAXES";
86 (2) use a method of delivery that obligates the delivery service to require:
87 (a) the purchaser who placed the delivery sale order, or a person 19 years of age or

88 older designated by the purchaser, to sign to accept delivery of the shipping container;

89 (b) proof, in the form of a valid government issued identification bearing a photograph
90 of the individual who signs to accept delivery of the shipping container, demonstrating that the
91 individual is:

92 (i) (A) the purchaser who placed the delivery sale order; or

93 (B) a person 19 years of age or older designated by the purchaser; and

94 (ii) not under 19 years of age, if the person appears to be under 27 years of age; and

95 (3) provide to the delivery service evidence that the cigarette packages or cigarette
96 containers bear the tax stamps required under Section 59-14-604.

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

98 **59-14-604. Payment of taxes required.**

99 To the extent permitted by federal law, a person may not cause cigarettes to be
100 delivered by a delivery service in connection with a delivery sale unless the tax required under
101 Section 59-14-204 has been paid as evidenced by a tax stamp on the cigarette packages or
102 cigarette containers to be delivered.

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

104 **59-14-605. Deliverer requirements.**

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

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

108 (ii) complies with the requirements of Subsection 59-104-603(2).

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

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

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

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

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

- 119 (a) the sale shall be considered a delivery sale under this part; and
- 120 (b) the person accepting the order shall comply with the requirements imposed on
- 121 delivery services under this part.

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

123 **59-14-606. Penalties and forfeiture.**

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

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

126 (A) \$1,000; or

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

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

129 (A) \$5,000; or

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

131 (b) A person who intentionally violates the provisions of this part, including falsely
132 submitting a certification in the name of another person under Subsection 59-14-602(2)(b),
133 shall be for each violation:

134 (i) fined the greater of:

135 (A) \$10,000; or

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

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

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

139 (c) In addition to the penalties under Subsections (1)(a) and (1)(b), a person who fails
140 to pay any tax required under this part in connection with a delivery sale shall be fined an
141 amount equal to five times the amount of the tax due but unpaid.

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

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

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

148 **59-14-607. Enforcement.**

149 The attorney general or any person who holds a permit under 26 U.S.C. Sec. 5712 may

150 bring an action in court to prevent or restrain violations of this part.

151 Section 8. **Effective date.**

152 This act takes effect on July 1, 2003.