

Representative Brian M. Greene proposes the following substitute bill:

CIGARETTE, TOBACCO, AND NICOTINE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes related to cigarettes, tobacco, and nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms and amends definitions;
- ▶ amends criminal provisions related to cigarettes, tobacco, and nicotine products;

and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

76-10-101, as last amended by Laws of Utah 2010, Chapter 114

76-10-102, as last amended by Laws of Utah 1986, Chapter 66

76-10-103, as enacted by Laws of Utah 1973, Chapter 196

76-10-104, as last amended by Laws of Utah 2010, Chapter 114



26 76-10-105, as last amended by Laws of Utah 2010, Chapter 114

27 76-10-105.1, as last amended by Laws of Utah 2010, Chapter 114

28 76-10-111, as last amended by Laws of Utah 2010, Chapter 114

29

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

31 Section 1. Section 76-10-101 is amended to read:

32 **76-10-101. Definitions.**

33 As used in this part:

34 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
35 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
36 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
37 in Subsection (2).

38 (2) "Cigarette" [~~means a product that contains nicotine, is intended to be burned under~~
39 ~~ordinary conditions of use, and consists of:~~] is as defined in Section 59-14-102.

40 [~~(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco;~~
41 ~~or]~~

42 [~~(b) any roll of tobacco wrapped in any substance containing tobacco which, because of~~
43 ~~its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to~~
44 ~~be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).]~~

45 (3) "Electronic cigarette" means any device, other than a cigarette or cigar, intended to
46 deliver vapor containing nicotine into a person's respiratory system.

47 (4) "Nicotine product" means a product containing nicotine, except for a cigarette or a
48 tobacco product, that is not approved by the United States Food and Drug Administration as an
49 aid in quitting the use of tobacco or nicotine.

50 [~~(4)~~] (5) "Place of business" includes:

51 (a) a shop;

52 (b) a store;

53 (c) a factory;

54 (d) a public garage;

55 (e) an office;

56 (f) a theater;

- 57 (g) a recreation hall;
- 58 (h) a dance hall;
- 59 (i) a poolroom;
- 60 (j) a café;
- 61 (k) a cafeteria;
- 62 (l) a cabaret;
- 63 (m) a restaurant;
- 64 (n) a hotel;
- 65 (o) a lodging house;
- 66 (p) a streetcar;
- 67 (q) a bus;
- 68 (r) an interurban or railway passenger coach;
- 69 (s) a waiting room; and
- 70 (t) any other place of business.

71 (6) "Retail tobacco specialty business" is as defined in Section 10-8-41.6.

72 [~~(5)~~] (7) "Smoking" [means the possession of any lighted cigar, cigarette, pipe, or other
73 lighted smoking equipment] is as defined in Section 26-38-2.

74 (8) "Tobacco product" is as defined in Section 59-14-102.

75 Section 2. Section **76-10-102** is amended to read:

76 **76-10-102. Cigarettes and tobacco -- Advertising restrictions -- Warnings in**
77 **smokeless tobacco advertisements.**

78 (1) It is a class B misdemeanor for any person to display on any billboard, streetcar
79 sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of
80 cigarettes, cigarette papers, cigars, chewing tobacco, ~~[or]~~ smoking tobacco, other tobacco
81 product, or nicotine product or any disguise or substitute of either, except that a dealer in
82 cigarettes, cigarette papers, a tobacco product, a nicotine product, or cigars, or their substitutes,
83 may have a sign on the front of ~~[his]~~ the dealer's place of business stating that ~~[he]~~ the dealer is
84 a dealer in the articles~~;~~, provided that nothing herein shall be construed to prohibit the
85 advertising of cigarettes, cigarette papers, chewing tobacco ~~[or]~~, smoking tobacco, other
86 tobacco product, or nicotine product or any substitute of either, in any newspaper, magazine or
87 periodical printed or circulating in this state.

88 (2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or
89 periodical published in this state must bear a warning which states: "Use of smokeless tobacco
90 may cause oral cancer and other mouth disorders and is addictive." This warning must be in a
91 conspicuous location and in conspicuous and legible type, in contrast with the typography,
92 layout, and color of all other printed material in the advertisement. For purposes of this
93 subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that
94 is intended to be placed in the oral cavity or nasal passage. In the event the United States
95 Congress passes legislation which requires warnings in advertisements of smokeless tobacco,
96 the specific language required to be placed in advertisements by that legislation shall take
97 precedence over this subsection.

98 Section 3. Section **76-10-103** is amended to read:

99 **76-10-103. Permitting minors to use tobacco in place of business -- Permitting**
100 **minors to enter a retail tobacco specialty business.**

101 (1) It is a class C misdemeanor for the proprietor of any place of business to knowingly
102 permit persons under age 19 to frequent a place of business while they are using a cigarette, a
103 nicotine product, or a tobacco product.

104 (2) It is a class C misdemeanor for the proprietor of a retail tobacco specialty business
105 to knowingly permit a person under age 19 to enter the retail tobacco specialty business.

106 Section 4. Section **76-10-104** is amended to read:

107 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
108 **-- Penalties.**

109 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
110 provides any cigar, cigarette, electronic cigarette, [~~or~~] other tobacco product, or nicotine
111 product in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on
112 the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on
113 subsequent offenses.

114 (2) For purposes of this section "provides":

115 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

116 (b) does not include the acts of the United States Postal Service or other common
117 carrier when engaged in the business of transporting and delivering packages for others or the
118 acts of a person, whether compensated or not, who transports or delivers a package for another

119 person without any reason to know of the package's content.

120 Section 5. Section **76-10-105** is amended to read:

121 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
122 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

123 (1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's
124 possession any cigar, cigarette, electronic cigarette, [~~or~~] other tobacco product, or nicotine
125 product in any form is guilty of a class C misdemeanor and subject to:

126 (a) a minimum fine or penalty of \$60; and

127 (b) participation in a court-approved tobacco education program, which may include a
128 participation fee.

129 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the
130 person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject
131 to the jurisdiction of the Juvenile Court and:

132 (a) a minimum fine or penalty of \$60; and

133 (b) participation in a court-approved tobacco education program, which may include a
134 participation fee.

135 (3) A compliance officer appointed by a board of education under Section 53A-3-402
136 may issue citations for violations of this section committed on school property. Cited
137 violations shall be reported to the appropriate juvenile court.

138 Section 6. Section **76-10-105.1** is amended to read:

139 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes and tobacco**
140 **products -- Supremacy clause -- Penalties.**

141 (1) As used in this section:

142 (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or
143 delivers nicotine and is intended for use by a consumer in a cigarette.

144 (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or
145 delivers nicotine and is intended to be smoked by a consumer in a pipe.

146 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
147 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
148 or who operates a facility where a vending machine or a self-service display is permitted under
149 Subsection (3)(b).

150 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,
151 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access
152 without the intervention of a retail employee.

153 (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or
154 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

155 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic
156 cigarettes, cigars, cigarette tobacco, pipe tobacco, ~~and~~ smokeless tobacco, other tobacco
157 products, or a nicotine product only in a direct, face-to-face exchange between:

- 158 (i) an employee of the retailer; and
- 159 (ii) the purchaser.

160 (b) Examples of methods that are not permitted include vending machines and
161 self-service displays.

162 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
163 containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, ~~or~~
164 smokeless tobacco, other tobacco products, or a nicotine product if the locked cabinets are
165 accessible only to the retailer or the retailer's employees.

166 (3) The following sales are permitted as exceptions to Subsection (2):

167 (a) mail-order sales, if the provisions of Section 59-14-509 are met;

168 (b) sales from vending machines, including vending machines that sell packaged,
169 single cigarettes or cigars, and self-service displays that are located in a separate and defined
170 area within a facility where the retailer ensures that no person younger than 19 years of age is
171 present, or permitted to enter, at any time~~[- unless accompanied by a parent or legal guardian];~~
172 and

173 (c) sales ~~[by a retailer from a retail store which derives at least 80% of its revenue from~~
174 ~~tobacco and tobacco-related products and where the retailer ensures that no person younger~~
175 ~~than 19 years of age is present, or permitted to enter at any time, unless accompanied by a~~
176 ~~parent or legal guardian] from a vending machine or a self-service display, including a vending~~
177 ~~machine that sells packaged, single cigarettes or cigars, if the vending machine or self-service~~
178 ~~display is located in a retail tobacco specialty business.~~

179 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
180 subdivision of the state or by a state agency that affects the sale, placement, or display of

181 cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco
182 that is not essentially identical to the provisions of this section and Section 76-10-102 is
183 superseded.

184 ~~[(5) (a) A parent or legal guardian who accompanies a person younger than 19 years of~~
185 ~~age into an area described in Subsection (3)(b) or into a retail store as described in Subsection~~
186 ~~(3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a~~
187 ~~cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as~~
188 ~~provided for in Section 76-10-104 and the penalties provided for in that section.]~~

189 ~~[(b)]~~ (5) Nothing in this section may be construed as permitting a person to provide
190 tobacco to a minor in violation of Section 76-10-104.

191 (6) Violation of Subsection (2) or (3) is a:

192 (a) class C misdemeanor on the first offense;

193 (b) class B misdemeanor on the second offense; and

194 (c) class A misdemeanor on the third and all subsequent offenses.

195 Section 7. Section **76-10-111** is amended to read:

196 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
197 **electronic cigarettes -- Exceptions.**

198 (1) The Legislature finds that:

199 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
200 use those products because research indicates that they may cause mouth or oral cancers;

201 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

202 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
203 tobacco products; and

204 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
205 the interest of the health of the citizens of this state.

206 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
207 and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, [or]
208 electronic cigarette, other tobacco product, or nicotine product in this state. Any person who
209 violates this section is guilty of a class C misdemeanor for the first offense, and is guilty of a
210 class B misdemeanor for any subsequent offense.

211 (3) (a) Smokeless tobacco, chewing tobacco, [or] an electronic cigarette, other tobacco

212 product, or nicotine product may be distributed to adults without charge at professional
213 conventions where the general public is excluded.

214 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
215 smokeless tobacco, chewing tobacco, [~~or~~] an electronic cigarette, other tobacco product, or
216 nicotine product to a person of legal age upon the person's purchase of another tobacco product
217 or electronic cigarette.

218 Section 8. **Effective date.**

219 This bill takes effect on July 1, 2013.