

SALE OF TOBACCO PRODUCTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Carl R. Saunders

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AN ACT RELATING TO CRIMINAL CODE; DEFINING TERMS; REQUIRING TOBACCO PRODUCTS BE SOLD IN A DIRECT, FACE-TO-FACE EXCHANGE WITH LIMITED EXCEPTIONS; PROHIBITING LOCAL LAWS INCONSISTENT WITH STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

76-10-101, as last amended by Chapter 281, Laws of Utah 1994

76-10-105.1, as enacted by Chapter 194, Laws of Utah 1989

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

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

76-10-101. Definitions.

As used in this part:

~~[(1) "Bar" means any establishment or portion of an establishment where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment with tables or seating facilities where, in consideration of payment, meals are served.]~~

~~[(2)]~~ (1) "Place of business" means any and all [such] places such as shops, stores, factories, public garages, offices, theaters, recreation and dance halls, poolrooms, cafes, cafeterias, cabarets, restaurants, hotels, lodging houses, streetcars, buses, interurban and railway passenger coaches and waiting rooms.

~~[(3)]~~ (2) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

Section 2. Section **76-10-105.1** is amended to read:

76-10-105.1. Requirement of direct, face-to-face sale of tobacco products.

(1) As used in this section:

(a) (i) "Cigarette" means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

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

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (1)(a)(i).

(ii) "Cigarette" does not include a standard 60 carton case.

(b) "Cigarette tobacco" means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements pertaining to cigarettes shall also apply to cigarette tobacco.

(c) "Retailer" means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption or who operates a facility where vending machines or self-service displays are permitted under this section.

(d) "Self-service display" means any display of cigarettes or smokeless tobacco products to which the public has access without the intervention of a retail employee.

(e) "Smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity. "Smokeless tobacco" does not include multi-container packs of smokeless tobacco.

[~~(1)~~] (2) (a) Except as provided in Subsection [~~(2)~~](3), [~~the gift or sale of cigarettes or tobacco in any form through vending machines or tobacco product machines is prohibited in this state.~~] a retailer may sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods that are not permitted include vending machines and self-service displays.

(b) Subsection (2)(a) does not prohibit the use or display of locked cabinets containing cigarettes or smokeless tobacco if the locked cabinets are only accessible to the retailer or its employees.

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

(a) mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail; and

(b) vending machines, including vending machines that sell packaged, single cigarettes, and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than under 19 years of age is present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian.

~~[(2) (a) A bar, or a privately owned and operated club or association that has a private club liquor license under Title 32A, Chapter 5, or that requires membership and charges a membership fee, may maintain cigarette or tobacco product vending machines on its premises.]~~

~~[(b) A workplace may maintain cigarette or tobacco product vending machines for its adult employees, in an area not available to the general public.]~~

(4) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is superceded.

(5) A parent or legal guardian who accompanies a person younger than 19 years of age into an area described in Subsection (3)(b) and permits the person younger than 19 years of age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of furnishing tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

~~[(3)] (6) Violation of [this section] Subsection (2) or (3) is a:~~

~~(a) class C misdemeanor on the first offense[; a];~~

~~(b) class B misdemeanor on the second offense[;]; and [a]~~

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

Section 3. **Effective date.**

This act takes effect on January 1, 1999.