

PROVIDING TOBACCO TO MINORS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Edgar Allen

AN ACT RELATING TO THE CRIMINAL CODE; PROHIBITING A PERSON FROM PROVIDING TOBACCO TO A MINOR; AND MAKING CONFORMING AMENDMENTS.

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

AMENDS:

76-10-104, as last amended by Chapter 194, Laws of Utah 1989

76-10-105.1, as last amended by Chapter 412, Laws of Utah 1998

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

Section 1. Section **76-10-104** is amended to read:

76-10-104. Providing cigars, cigarettes, or tobacco to minors -- Penalties.

(1) Any person who [~~sells, gives, or furnishes~~] knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, or tobacco in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

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

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

(b) does not include the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.

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.

(2) (a) Except as provided in Subsection (3), 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.

(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) 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~~] providing tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

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

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

(a) class C misdemeanor on the first offense;

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

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