

**YOUTH ACCESS TO TOBACCO**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Carl R. Saunders**

**This act modifies the Utah Criminal Code and requirements for programs funded with tobacco settlement monies. This act prohibits the display or advertisement of tobacco products on, above, or immediately in front of a retail check-out counter. This act specifies the permitted use of an overhead storage rack or cabinet. This act limits the exemption for self-service displays of cigarettes and smokeless tobacco to retailers who deal exclusively, or nearly exclusively, in the sale of tobacco products. This act prohibits the sale of cigarettes and smokeless tobacco through vending machines. This act specifies that the Department of Health, with the assistance of local health departments and peace officers, is responsible for monitoring and ensuring compliance with tobacco display and sale provisions. This act prohibits a retailer from selling tobacco products to a person appearing to be under 30 years of age unless the person provides a driver license or other form of identification documenting that the person is not younger than 19 years of age. This act eliminates the limit on the amount of tobacco settlement funds that may be used for litigation to enforce provisions governing sales of tobacco products to underage persons. This act makes technical amendments. This act provides an effective date.**

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

AMENDS:

**63-97-401**, as enacted by Chapter 284, Laws of Utah 2000

**76-10-105.1**, as last amended by Chapters 1 and 176, Laws of Utah 2000

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

Section 1. Section **63-97-401** is amended to read:

**63-97-401. Requirements for tobacco programs.**

(1) To be eligible to receive funding under this chapter for a tobacco prevention, reduction,



28 cessation, or control program, an organization, whether private, governmental, or  
29 quasi-governmental, shall:

30 (a) submit a request to the Department of Health containing the following information:

31 (i) for media campaigns to prevent or reduce smoking, the request shall demonstrate sound  
32 management and periodic evaluation of the campaign's relevance to the intended audience,  
33 particularly in campaigns directed toward youth, including audience awareness of the campaign  
34 and recollection of the main message;

35 (ii) for school-based education programs to prevent and reduce youth smoking, the request  
36 shall describe how the program will be effective in preventing and reducing youth smoking;

37 (iii) for community-based programs to prevent and reduce smoking, the request shall  
38 demonstrate that the proposed program:

39 (A) has a comprehensive strategy with a clear mission and goals;

40 (B) provides for committed, caring, and professional leadership; and

41 (C) if directed toward youth:

42 (I) offers youth-centered activities in youth accessible facilities;

43 (II) is culturally sensitive, inclusive, and diverse;

44 (III) involves youth in the planning, delivery, and evaluation of services that affect them;

45 and

46 (IV) offers a positive focus that is inclusive of all youth; and

47 (iv) for enforcement, control, and compliance program, the request shall demonstrate that  
48 the proposed program can reasonably be expected to reduce the extent to which tobacco products  
49 are available to individuals under the age of 19;

50 (b) agree, by contract, to file an annual written report with the Department of Health. The  
51 report shall contain the following:

52 (i) the amount funded;

53 (ii) the amount expended;

54 (iii) a description of the program or campaign and the number of adults and youth who  
55 participated;

56 (iv) specific elements of the program or campaign meeting the applicable criteria set forth  
57 in Subsection (1)(a); and

58 (v) a statement concerning the success and effectiveness of the program or campaign;

59 (c) agree, by contract, to not use any funds received under this chapter directly or  
60 indirectly, to:

61 (i) engage in any lobbying or political activity, including the support of, or opposition to,  
62 candidates, ballot questions, referenda, or similar activities; or

63 (ii) engage in litigation with any tobacco manufacturer, retailer, or distributor, except to  
64 enforce:

65 (A) the provisions of the Master Settlement Agreement;

66 (B) Title 26, Chapter 38, Utah Indoor Clean Air Act;

67 (C) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underaged Persons; and

68 (D) Title 77, Chapter 39, Sale of Tobacco and Alcohol to [~~Underaged~~] Underage Persons[;  
69 ~~in an amount not to exceed the state level of funding in fiscal year 1999-2000 for enforcement of~~  
70 ~~Title 77, Chapter 39~~]; and

71 (d) agree, by contract, to repay the funds provided under this chapter if the organization:

72 (i) fails to file a timely report as required by Subsection (1)(b); or

73 (ii) uses any portion of the funds in violation of Subsection (1)(c).

74 (2) The Department of Health shall review and evaluate the success and effectiveness of  
75 any program or campaign that receives funding pursuant to a request submitted under Subsection  
76 (1). The review and evaluation:

77 (a) shall include a comparison of annual smoking trends;

78 (b) may be conducted by an independent evaluator; and

79 (c) may be paid for by funds appropriated from the account for that purpose.

80 (3) The Department of Health shall annually report to the Health and Human Services  
81 Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).

82 (4) An organization that fails to comply with the contract requirements set forth in  
83 Subsection (1) shall:

84 (a) repay the state as provided in Subsection (1)(d); and

85 (b) be disqualified from receiving funds under this chapter in any subsequent fiscal year.

86 (5) The attorney general shall be responsible for recovering funds that are required to be  
87 repaid to the state under this section.

88 (6) Nothing in this section may be construed as applying to funds that are not appropriated  
89 under this chapter.

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

91 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products -- Display**  
92 **of tobacco products -- Proof of age -- Enforcement -- Penalties.**

93 (1) As used in this section:

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

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

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

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

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

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

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

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

112 (f) "Tobacco product" means a cigarette, smokeless tobacco, a roll-your-own cigarette, an  
113 ingredient to make a cigarette, a cigar, a pipe, and pipe tobacco, and includes the packaging in  
114 which any of these products are sold.

115 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes and smokeless  
116 tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples  
117 of methods that are not permitted include vending machines and self-service displays.

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

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

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

124 (b) ~~[vending machines, including vending machines that sell packaged, single cigarettes,~~  
125 ~~and] if the retailer deals exclusively, or nearly exclusively, in the sale of tobacco products,~~  
126 self-service displays that are located in a separate and defined area within a facility where the  
127 retailer ensures that no person younger than 19 years of age is present, or permitted to enter, at any  
128 time, unless accompanied by a parent or legal guardian.

129 (4) (a) A retailer may not display or advertise tobacco products, or likenesses thereof, or  
130 tobacco product brand names on, above, or immediately in front of a check-out counter.

131 (b) An overhead storage rack or cabinet that does not display or advertise tobacco  
132 products, or likenesses thereof, or tobacco product brand names is permitted under Subsection  
133 (4)(a) if the tobacco products in the rack or cabinet are not visible from the front of the check-out  
134 counter and are accessible only to the retailer's employees.

135 (5) A retailer may not sell tobacco products to a person appearing to be under 30 years of  
136 age unless the person provides to the retailer a driver license or other form of identification  
137 documenting that the person is not younger than 19 years of age.

138 (6) The Department of Health shall monitor and ensure compliance with Subsections (2)  
139 through (5). The department may fulfill this duty with the assistance of:

140 (a) local health departments; and

141 (b) peace officers, in conjunction with investigations conducted under Title 77, Chapter  
142 39, Sale of Tobacco and Alcohol to Underage Persons.

143 ~~[(4)]~~ (7) Any ordinance, regulation, or rule adopted by the governing body of a political  
144 subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless  
145 tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is  
146 superseded.

147 ~~[(5)]~~ (8) (a) A parent or legal guardian who accompanies a person younger than 19 years  
148 of age into an area described in Subsection (3)(b) and permits the person younger than 19 years  
149 of age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of providing  
150 tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

151 (b) Nothing in this section may be construed as permitting a person to provide tobacco to

152 a minor in violation of Section 76-10-104.

153 [~~(6) Violation~~] (9) A violation of [Subsection] Subsections (2) [~~or (3)~~] through (5) is a:

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

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

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

157 Section 3. **Effective date.**

158 This act takes effect on July 1, 2001.

---

---

**Legislative Review Note**  
**as of 1-29-01 1:43 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**