

Representative Carl R. Saunders proposes to substitute the following bill:

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 of tobacco products on top of a retail check-out counter. 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 specifies that peace officers, in conjunction with investigations of sales of tobacco to underage persons, are responsible for monitoring and ensuring compliance with tobacco display and sale provisions. 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, cessation, or control program, an organization, whether private, governmental, or quasi-governmental, shall:

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



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

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

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

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

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

36 (C) if directed toward youth:

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

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

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

40 and

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

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

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

47 (i) the amount funded;

48 (ii) the amount expended;

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

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

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

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

56 (i) engage in any lobbying or political activity, including the support of, or opposition to,

57 candidates, ballot questions, referenda, or similar activities; or

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

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

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

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

63 (D) Title 77, Chapter 39, Sale of Tobacco and Alcohol to [~~Underaged~~] Underage Persons[;

64 ~~in an amount not to exceed the state level of funding in fiscal year 1999-2000 for enforcement of~~

65 ~~Title 77, Chapter 39]; and~~

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

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

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

69 (2) The Department of Health shall review and evaluate the success and effectiveness of
70 any program or campaign that receives funding pursuant to a request submitted under Subsection

71 (1). The review and evaluation:

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

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

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

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

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

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

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

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

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

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

86 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products -- Display**
87 **of tobacco products -- Proof of age -- Enforcement -- Penalties.**

88 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (b) if located in a separate and defined area within a facility where the retailer ensures that
 120 no person younger than 19 years of age is present, or permitted to enter, at any time, unless
 121 accompanied by a parent or legal guardian:

122 (i) vending machines, including vending machines that sell packaged, single cigarettes[-];
 123 and

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

128 (4) (a) A retailer may not display a tobacco product, or a likeness thereof, on top of a
 129 check-out counter.

130 (b) Subsection (4)(a) does not prohibit the use of an overhead storage rack or cabinet if the
 131 tobacco products in the rack or cabinet are accessible only to the retailer's employees.

132 (5) Peace officers, in conjunction with investigations conducted under Title 77, Chapter
 133 39, Sale of Tobacco and Alcohol to Underage Persons, shall monitor and ensure compliance with
 134 Subsections (2) through (4).

135 [~~(4)~~] (6) Any ordinance, regulation, or rule adopted by the governing body of a political
 136 subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless
 137 tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is
 138 superceded.

139 [~~(5)~~] (7) (a) A parent or legal guardian who accompanies a person younger than 19 years
 140 of age into an area described in Subsection (3)(b) and permits the person younger than 19 years
 141 of age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of providing
 142 tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

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

145 [~~(6) Violation~~] (8) A violation of [Subsection] Subsections (2) [or (3)] through (4) is a:

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

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

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

149 Section 3. **Effective date.**

This act takes effect on July 1, 2001.

Legislative Review Note
as of 2-8-01 10:53 AM

The preemption provisions of the Federal Cigarette Labeling and Advertising Act prohibits states from imposing requirements or prohibitions based on smoking or health with respect to the advertising or promotion of any cigarettes. Courts have interpreted this section to mean that states can not regulate the content of cigarette advertisements. Section 2 of this bill seeks to regulate the location of cigarette products or the likeness of a cigarette product . Since the regulation deals with the location of the product and not the content of the advertisement, this bill does not appear to be preempted by the federal law.

Office of Legislative Research and General Counsel