

1                                   **TOBACCO MARKETING PRACTICES**  
2                                   **RESTRICTIONS**

3                                   2003 GENERAL SESSION  
4                                   STATE OF UTAH

5                                   **Sponsor: Curtis S. Bramble**

6   **This act amends the Utah Criminal Code and the Judicial Code. The act increases**  
7   **penalties for illegal possession of cigars, cigarettes, or tobacco by minors. This act also**  
8   **clarifies the rules governing use of retail store space by tobacco manufacturers to sell**  
9   **tobacco in Utah, and prohibits after a certain period of time, tobacco manufacturers from**  
10 **engaging in certain practices regarding cigarette merchandising, shelf space, advertising,**  
11 **stocking, or display in the retail sale of tobacco, including prohibiting tobacco**  
12 **manufacturers from requiring retailers to engage in such practices as a condition of**  
13 **receiving merchandising and promotional programs and payments from the**  
14 **manufacturer in connection with direct, face-to-face retail sales of tobacco products.**

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

16 AMENDS:

17           **76-10-105**, as last amended by Chapter 212, Laws of Utah 2002

18           **76-10-105.1**, as last amended by Chapters 1 and 176, Laws of Utah 2000

19           **78-3a-502**, as last amended by Chapter 212, Laws of Utah 2002

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

21           Section 1. Section **76-10-105** is amended to read:

22           **76-10-105. Buying or possessing cigars, cigarettes, or tobacco by minors --**  
23 **Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

24           (1) Any 18 year old person who buys or attempts to buy, accepts, or has in his  
25 possession any cigar, cigarette, or tobacco in any form is guilty of a class C misdemeanor and  
26 subject to:

27           (a) a minimum fine or penalty of [~~\$60~~] \$100; and



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

30 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in his  
31 possession any cigar, cigarette, or tobacco in any form is subject to the jurisdiction of the  
32 Juvenile Court and:

33 (a) a minimum fine or penalty of [~~\$60~~] \$100; and

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

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

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

40 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products.**

41 (1) As used in this section:

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

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

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

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

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

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

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

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

59 "Smokeless tobacco" does not include multi-container packs of smokeless tobacco.

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

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

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

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

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

74 (4) Any ordinance, regulation, or rule adopted by the governing body of a political  
75 subdivision or state agency that affects the sale, placement, or display of cigarettes or  
76 smokeless tobacco that is not essentially identical to the provisions of this section and Section  
77 76-10-102 is superceded.

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

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

85 (6) (a) A cigarette retailer may enter into and participate in a cigarette manufacturer's  
86 merchandising, advertising, display, or consumer discount or promotional agreement or  
87 program in which the retailer:

88 (i) provides cigarette merchandising, shelf space, advertising, stocking, or display to  
89 the manufacturer;

- 90 (ii) conducts the manufacturer's consumer promotion and discount programs and  
91 provides such promotions and discounts to consumers; and
- 92 (iii) is paid or compensated by the manufacturer for performing such activities.
- 93 (b) A cigarette manufacturer may:
- 94 (i) offer and enter into retailer agreements and programs as described in Subsection  
95 (6)(a);
- 96 (ii) pay or provide other compensation to retailers for participating in agreements and  
97 programs; and
- 98 (iii) provide consumer promotions and discounts to retailers for the retailers to furnish  
99 to consumers.
- 100 (c) It is unlawful for a cigarette manufacturer to directly or indirectly:
- 101 (i) condition a retailer's receipt of consumer promotions or consumer price discounts  
102 on the retailer's conduct or actions relating to the manufacturer's products or the products of  
103 any other manufacturer's products or the products of any other manufacturer, except for  
104 requirements that the retailer:
- 105 (A) provide the promotion or discount to consumers; and
- 106 (B) advertise and display the promotion and the promoted or discounted product to  
107 consumers;
- 108 (ii) require or cause the retailer to allocate a specified percentage or fraction of the  
109 retailer's merchandising, stocking, display, shelf, or advertising space to the manufacturer;
- 110 (iii) prevent, restrict, or limit a retailer from stocking, advertising, displaying, or  
111 participating in a program for another manufacturer's product;
- 112 (iv) prevent, restrict, or limit the retailer from determining the size or location of the  
113 space that the retailer uses to stock, display, promote, or advertise cigarettes; or
- 114 (v) require the retailer to raise its prices on, or prevent the retailer from setting,  
115 retaining, or reducing its prices on, another manufacturer's products.
- 116 [~~(6)~~] (7) Violation of Subsection (2) [~~or~~], (3), or (6) is a:
- 117 (a) class C misdemeanor on the first offense;
- 118 (b) class B misdemeanor on the second offense; and
- 119 (c) class A misdemeanor on the third and all subsequent offenses.
- 120 (8) Any person affected by a violation of Subsection (6) has a private right of action to

121 seek civil legal and equitable relief against any person violating Subsection (6), including a  
122 civil action for injunctive relief.

123 (9) The requirements of Subsection (6) shall be met upon the first to occur of the  
124 following:

125 (a) the natural expiration or earlier termination of a cigarette manufacturer's contract  
126 with a retailer; or

127 (b) January 1, 2004.

128 Section 3. Section **78-3a-502** is amended to read:

129 **78-3a-502. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal**  
130 **referral -- Citation -- Failure to appear.**

131 (1) Proceedings in minor's cases are commenced by petition.

132 (2) (a) A peace officer or any public official of the state, any county, city, or town  
133 charged with the enforcement of the laws of the state or local jurisdiction shall file a formal  
134 referral with the juvenile court within ten days of the minor's arrest. If the arrested minor is  
135 taken to a detention facility, the formal referral shall be filed with the juvenile court within 72  
136 hours, excluding weekends and holidays. There shall be no requirement to file a formal  
137 referral with the juvenile court on an offense that would be a class B misdemeanor or less if  
138 committed by an adult.

139 (b) When the court is informed by a peace officer or other person that a minor is or  
140 appears to be within the court's jurisdiction, the probation department shall make a preliminary  
141 inquiry to determine whether the interests of the public or of the minor require that further  
142 action be taken.

143 (c) Based on the preliminary inquiry, the court may authorize the filing of or request  
144 that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7  
145 file a petition. In its discretion, the court may, through its probation department, enter into a  
146 written consent agreement with the minor and the minor's parent, guardian, or custodian for the  
147 nonjudicial adjustment of the case if the facts are admitted and establish prima facie  
148 jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more  
149 than two months without leave of a judge of the court, who may extend the period for an  
150 additional two months. The probation department may not in connection with any nonjudicial  
151 adjustment compel any person to appear at any conference, produce any papers, or visit any

152 place.

153 (d) The nonjudicial adjustment of a case may include conditions agreed upon as part of  
154 the nonjudicial closure:

- 155 (i) payment of a financial penalty of not more than \$100 to the Juvenile Court;
- 156 (ii) payment of victim restitution;
- 157 (iii) satisfactory completion of compensatory service;
- 158 (iv) referral to an appropriate provider for counseling or treatment;
- 159 (v) attendance at substance abuse programs or counseling programs;
- 160 (vi) compliance with specified restrictions on activities and associations; and
- 161 (vii) other reasonable actions that are in the interest of the minor and the community.

162 (e) Proceedings involving offenses under Section 78-3a-506 are governed by that  
163 section regarding suspension of driving privileges.

164 (f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile  
165 Court shall include a minimum fine or penalty of [~~\$60~~] \$100 and participation in a  
166 court-approved tobacco education program, which may include a participation fee.

167 (3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or  
168 older, the county attorney, district attorney, or attorney general may commence an action by  
169 filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction  
170 and certify the minor to the district court.

171 (4) (a) In cases of violations of fish and game laws, boating laws, class B and class C  
172 misdemeanors, other infractions or misdemeanors as designated by general order of the Board  
173 of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the  
174 Juvenile Court, a petition is not required and the issuance of a citation as provided in Section  
175 78-3a-503 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not  
176 required unless requested by the court.

177 (b) Any failure to comply with the time deadline on a formal referral may not be the  
178 basis of dismissing the formal referral.

**Legislative Review Note**  
as of 2-4-03 1:45 PM

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

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that provisions of this bill will increase State revenues by \$96,000 annually beginning FY 2004. Half of the increased revenues will go to the General Fund account and half will go to the Juvenile Restitution account.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$0	\$0	\$48,000	\$48,000
Restricted Funds	\$0	\$0	\$48,000	\$48,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$96,000</b>	<b>\$96,000</b>

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**Individual and Business Impact**

Noncompliant juveniles will pay an additional \$40 for each violation; noncompliant tobacco companies may incur monetary penalties.

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**Office of the Legislative Fiscal Analyst**