

Representative Eric K. Hutchings proposes the following substitute bill:

1 **MAIL ORDER TOBACCO SALES AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Eric K. Hutchings**

5 Rebecca D. Lockhart

6

LONG TITLE

7 **General Description:**

8 This bill requires a cigarette retailer who sells cigarettes by mail order to require a
9 postal authority or common carrier who delivers the cigarettes to verify the age of the
10 person who accepts delivery of the mail order cigarettes in order to meet the
11 requirement of a face-to-face exchange for the sale of tobacco products in the state.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ requires a cigarette retailer who sells cigarettes by mail order to require a postal
15 authority or common carrier who delivers the cigarettes to verify the age of the
16 person who accepts delivery of the mail order cigarettes in order to meet the
17 requirement of a face-to-face exchange for the sale of tobacco products in the state.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **76-10-105.1**, as last amended by Chapters 1 and 176, Laws of Utah 2000
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Be it enacted by the Legislature of the state of Utah:

Section 1. 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):

57 (a) mail-order sales, [~~excluding mail-order redemption of coupons and distribution of~~
 58 ~~free samples through the mail, and~~] if the retailer requires the postal authority or other common
 59 carrier to:

60 (i) verify that the person who takes possession of the delivery and who signs for the
 61 delivery is 19 years of age or older; ~~h~~ [and] ~~h~~

62 (ii) obtain the signature of the person taking the delivery; and

62a ~~h~~ (iii) **INCLUDE AS PART OF THE SHIPPING DOCUMENTS A CLEAR AND CONSPICUOUS**
 62b **STATEMENT PROVIDING AS FOLLOWS: "THIS PACKAGE CONTAINS TOBACCO PRODUCTS: UTAH**
 62c **LAW PROHIBITS POSSESSION OF TOBACCO PRODUCTS BY INDIVIDUALS UNDER THE AGE OF 19;"**
 62d **AND ~~h~~**

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

67 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
 68 subdivision or state agency that affects the sale, placement, or display of cigarettes or
 69 smokeless tobacco that is not essentially identical to the provisions of this section and Section
 70 76-10-102 is superceded.

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

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

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

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

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

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

Fiscal Note

Mail Order Tobacco Sales Amendments

02-Feb-04

Bill Number HB0202S0110:28 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst