

1                                   **MAIL ORDER TOBACCO SALES AMENDMENTS**

2   2004 GENERAL SESSION

3   STATE OF UTAH

4                                   **Sponsor: Eric K. Hutchings**

5   Rebecca D. Lockhart

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7   **LONG TITLE**

8   **General Description:**

9           This bill removes mail order sales of cigarettes from the list of permissible exceptions  
10 to the requirement of a face-to-face exchange for the sale of tobacco products in the  
11 state.

12   **Highlighted Provisions:**

13           This bill:

14           ▶ removes mail order sales of cigarettes from the list of permissible exceptions to the  
15 requirement of a face-to-face exchange for the sale of tobacco products in the state.

16   **Monies Appropriated in this Bill:**

17           None

18   **Other Special Clauses:**

19           None

20   **Utah Code Sections Affected:**

21   AMENDS:

22           **76-10-105.1**, as last amended by Chapters 1 and 176, Laws of Utah 2000

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

25           Section 1. Section **76-10-105.1** is amended to read:

26           **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products.**

27           (1) As used in this section:



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

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

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

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

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

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

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

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

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

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

53 [~~(3) The following sales are permitted as exceptions to Subsection (2):~~]

54 [~~(a) mail-order sales, excluding mail-order redemption of coupons and distribution of  
55 free samples through the mail; and]~~

56 [~~(b)~~] (3) Notwithstanding Subsection (2), vending machines, including vending  
57 machines that sell packaged, single cigarettes, and self-service displays that are located in a  
58 separate and defined area within a facility where the retailer ensures that no person younger

59 than 19 years of age is present, or permitted to enter, at any time, unless accompanied by a  
60 parent or legal guardian are an exception to the requirements of Subsection (2).

61 (4) Any ordinance, regulation, or rule adopted by the governing body of a political  
62 subdivision or state agency that affects the sale, placement, or display of cigarettes or  
63 smokeless tobacco that is not essentially identical to the provisions of this section and Section  
64 76-10-102 is superceded.

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

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

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

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

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

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

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**Legislative Review Note**

**as of 12-16-03 2:00 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 can be implemented with existing resources.

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**Individual and Business Impact**

No significant fiscal impact.

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**Office of the Legislative Fiscal Analyst**