

1 **TOBACCO ACCESS RESTRICTIONS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Bradley G. Last**

5 Senate Sponsor: Wayne L. Niederhauser

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Criminal Code.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ amends restrictions on the sale, placement, and display of cigarettes and smokeless
13 tobacco to include cigars and pipe tobacco;

14 ▶ amends the state supremacy clause regarding sale, placement, and display to
15 include cigarette tobacco and pipe tobacco; and

16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **76-10-105.1**, as last amended by Laws of Utah 2004, Chapter 212

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

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

27 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products --**

28 **Supremacy clause -- Penalties.**

29 (1) As used in this section:

30 (a) ~~(f)~~ "Cigarette" means ~~any~~ a product which contains nicotine, is intended to be
31 burned under ordinary conditions of use, and consists of:

32 ~~(A)~~ (i) any roll of tobacco wrapped in paper or in any substance not containing
33 tobacco; or

34 ~~(B)~~ (ii) any roll of tobacco wrapped in any substance containing tobacco which,
35 because of its appearance, the type of tobacco used in the filler, or its packaging and labeling,
36 is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection
37 (1)(a)~~(f)~~.

38 ~~(ii) "Cigarette" does not include a standard 60 carton case of cigarettes.]~~

39 (b) "Cigar" means a product which contains nicotine, is intended to be burned under
40 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
41 any substance containing tobacco, other than any roll of tobacco which is a cigarette within
42 the meaning of Subsection (1)(a).

43 ~~(b)~~ (c) "Cigarette tobacco" means ~~any~~ a product that consists of loose tobacco that
44 contains or delivers nicotine and is intended for use by ~~consumers~~ a consumer in a cigarette.
45 ~~[Unless otherwise stated, the requirements pertaining to cigarettes shall also apply to cigarette~~
46 ~~tobacco.]~~

47 (d) "Pipe tobacco" means a product that consists of loose tobacco that contains or
48 delivers nicotine and is intended to be smoked by a consumer in a pipe.

49 ~~(c)~~ (e) "Retailer" means ~~any~~ a person who sells cigarettes, cigars, cigarette tobacco,
50 pipe tobacco, or smokeless tobacco to individuals for personal consumption or who operates a
51 facility where a vending ~~[machines]~~ machine or a self-service ~~[displays are]~~ display is
52 permitted under ~~[this section]~~ Subsection (3)(b).

53 ~~(d)~~ (f) "Self-service display" means ~~any~~ a display of cigarettes, cigars, cigarette
54 tobacco, pipe tobacco, or smokeless tobacco products to which the public has access without
55 the intervention of a retail employee.

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

58 cavity. [~~"Smokeless tobacco" does not include multi-container packs of smokeless tobacco.~~]

59 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, cigars,
60 cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct, face-to-face exchange
61 between [~~the retailer and the consumer.~~]:

62 (i) an employee of the retailer; and

63 (ii) the purchaser.

64 (b) Examples of methods that are not permitted include vending machines and
65 self-service displays.

66 [~~(b) Subsection~~] (c) Subsections (2)(a) [~~does]~~ and (b) do not prohibit the use or
67 display of locked cabinets containing cigarettes, cigars, cigarette tobacco, pipe tobacco, or
68 smokeless tobacco if the locked cabinets are [~~only~~] accessible only to the retailer or [~~its~~] the
69 retailer's employees.

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

71 (a) mail-order sales, if the retailer requires the postal authority or other common
72 carrier to:

73 (i) verify that the person who takes possession of the delivery and who signs for the
74 delivery is 19 years of age or older;

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

76 (iii) include as part of the shipping documents a clear and conspicuous statement
77 providing as follows: "This package contains tobacco products: Utah law prohibits possession
78 of tobacco products by individuals under the age of 19"; [~~and]~~

79 (b) sales from vending machines, including vending machines that sell packaged,
80 single cigarettes or cigars, and self-service displays that are located in a separate and defined
81 area within a facility where the retailer ensures that no person younger than 19 years of age is
82 present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian[~~;~~];
83 and

84 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from
85 tobacco and tobacco related products and where the retailer ensures that no person younger

86 than 19 years of age is present, or permitted to enter at any time, unless accompanied by a
87 parent or legal guardian.

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

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

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

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

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

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

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