

**TOBACCO ACCESS RESTRICTIONS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Utah Criminal Code.

**Highlighted Provisions:**

This bill:

- ▶ amends restrictions on the sale, placement, and display of cigarettes and smokeless tobacco to include cigars and pipe tobacco;
- ▶ amends the state supremacy clause regarding sale, placement, and display to include cigarette tobacco and pipe tobacco; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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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.**



28 (1) As used in this section:

29 (a) (i) "Cigarette" ~~[means any product which contains nicotine, is]~~ and "cigar" mean  
30 products which contain nicotine, are intended to be burned under ordinary conditions of use,  
31 and ~~[consists of: (A) any]~~ consist of a roll of tobacco ~~[wrapped in paper or in any substance~~  
32 ~~not containing tobacco; or].~~

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

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

37 (b) "Cigarette tobacco" ~~[means any product that consists]~~ and "pipe tobacco" mean  
38 products that consist of loose tobacco that ~~[contains or delivers]~~ contain or deliver nicotine and  
39 ~~[is]~~ are intended for use by ~~[consumers]~~ a consumer in a cigarette or a pipe. ~~[Unless otherwise~~  
40 ~~stated, the requirements pertaining to cigarettes shall also apply to cigarette tobacco.]~~

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

45 (d) "Self-service display" means ~~[any]~~ a display of cigarettes, cigars, cigarette tobacco,  
46 pipe tobacco, or smokeless tobacco products to which the public has access without the  
47 intervention of a retail employee.

48 (e) (i) "Smokeless tobacco" means ~~[any]~~ a product that consists of cut, ground,  
49 powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral  
50 cavity.

51 (ii) "Smokeless tobacco" does not include a multi-container ~~[packs]~~ pack of smokeless  
52 tobacco.

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

56 (i) an employee of the retailer; and

57 (ii) the purchaser.

58 (b) Examples of methods that are not permitted include vending machines and

59 self-service displays.

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

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

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

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

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

70 (iii) include as part of the shipping documents a clear and conspicuous statement  
71 providing as follows: "This package contains tobacco products: Utah law prohibits possession  
72 of tobacco products by individuals under the age of 19"; and

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

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

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

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

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

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

- 90 (b) class B misdemeanor on the second offense; and  
91 (c) class A misdemeanor on the third and all subsequent offenses.

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**Legislative Review Note**  
**as of 2-11-09 2:16 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 456 - Tobacco Access Restrictions**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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