Senator Margaret Dayton proposes the following substitute bill:

PROHIBITION ON INTERNET OR
MAIL-ORDER SALES OF TOBACCO
PRODUCTS

2009 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Margaret Dayton
House Sponsor: Bradley M. Daw

LONG TITLE

General Description:
This bill makes it a violation subject to civil penalties to cause tobacco products to be
ordered or purchased through the Internet or by mail.

Highlighted Provisions:
This bill:
- defines terms;
- makes it a violation to cause tobacco products to be ordered or purchased through
  the Internet or by mail; and
- establishes civil penalties for a violation of the prohibition against mail order or
  Internet tobacco sales.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:
ENACTS:

59-14-509, Utah Code Annotated 1953

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

Section 1. Section 59-14-509 is enacted to read:

59-14-509. Restrictions on mail order or Internet sales.

(1) For purposes of this section:

(a) "Distributor" means a person, wherever residing or located, who:

(i) is licensed in this state to purchase non-taxed tobacco products; and

(ii) stores, sells or otherwise disposes of tobacco products.

(b) "Licensed person" is as defined in Subsection 59-14-409(1).

(c) "Order or purchase" includes:

(i) by mail or delivery service;

(ii) through the Internet or computer network;

(iii) by telephone; or

(iv) through some other electronic method.

(d) "Retailer" means any person who sells tobacco products to consumers for personal consumption.

(2) A person, distributor, manufacturer, or retailer shall not:

(a) cause tobacco products or cigarettes as defined in Section 59-22-202 to be ordered or purchased by anyone other than a licensed person; or

(b) knowingly provide substantial assistance to a person who violates this section.

(3) (a) Each order or purchase of a tobacco product or cigarettes as defined in Section 59-22-202 in violation of Subsection (2) shall constitute a separate violation under this section.

(b) In addition to the penalties in Subsection (4), a person who violates this section is subject to:

(i) a civil penalty in an amount not to exceed $5,000 for each violation of this section;

(ii) an injunction to restrain a threatened or actual violation of this section; and

(iii) recovery by the state for:

(A) the costs of investigation;
the cost of expert witness fees;
(C) the cost of the action; and
(D) reasonable attorney's fees.

(4) A person who knowingly violates this section has engaged in an unfair and
deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court
shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged
and paid to the state treasurer for deposit in the General Fund.

Section 2.  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
(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):

(a) mail-order sales, if [the retailer requires the postal authority or other common carrier to:] the provisions of Section 59-14-509 are met; and

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

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

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

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

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

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

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

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

(a) class C misdemeanor on the first offense;

(b) class B misdemeanor on the second offense; and
(c) class A misdemeanor on the third and all subsequent offenses.
Fiscal Note

S.B. 228 1st Sub. (Green) - Prohibition on Internet or Mail-order Sales of Tobacco Products
2009 General Session
State of Utah

State Impact
The Courts will incur costs and the Attorney General will generate revenues in prosecuting and adjudicating cases, but no estimates can be made due to insufficient data.

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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Office of the Legislative Fiscal Analyst