

1                                   **PROHIBITION ON INTERNET OR**  
2                                   **MAIL-ORDER SALES OF TOBACCO**  
3                                   **PRODUCTS**

4                                   2009 GENERAL SESSION

5                                   STATE OF UTAH

6                                   **Chief Sponsor: Margaret Dayton**

7                                   House Sponsor: Bradley M. Daw

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9   **LONG TITLE**

10 **General Description:**

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

13 **Highlighted Provisions:**

14           This bill:

- 15           ▶ defines terms;
- 16           ▶ makes it a violation to cause tobacco products to be ordered or purchased through  
17 the Internet or by mail; and
- 18           ▶ establishes civil penalties for a violation of the prohibition against mail-order or  
19 Internet tobacco sales.

20 **Monies Appropriated in this Bill:**

21           None

22 **Other Special Clauses:**

23           None

24 **Utah Code Sections Affected:**

25 AMENDS:

26           **76-10-105.1**, as last amended by Laws of Utah 2004, Chapter 212

27 ENACTS:

28           **59-14-509**, Utah Code Annotated 1953

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

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

32 **59-14-509. Restrictions on mail order or Internet sales.**

33 (1) For purposes of this section:

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

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

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

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

38 (c) "Order or purchase" includes:

39 (i) by mail or delivery service;

40 (ii) through the Internet or computer network;

41 (iii) by telephone; or

42 (iv) through some other electronic method.

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

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

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

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

49 (3) (a) Each order or purchase of a tobacco product or cigarettes as defined in Section  
50 59-22-202 in violation of Subsection (2) shall constitute a separate violation under this  
51 section.

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

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

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

56 (iii) recovery by the state for:

57 (A) the costs of investigation;

58 (B) the cost of expert witness fees;

59 (C) the cost of the action; and

60 (D) reasonable attorney's fees.

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

65 Section 2. Section **76-10-105.1** is amended to read:

66 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products --**  
67 **Penalties.**

68 (1) As used in this section:

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

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

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

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

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

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

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

85 (e) "Smokeless tobacco" means any product that consists of cut, ground, powdered, or

86 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

87 "Smokeless tobacco" does not include multi-container packs of smokeless tobacco.

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

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

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

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

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

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

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

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

108 (4) Any ordinance, regulation, or rule adopted by the governing body of a political  
109 subdivision or state agency that affects the sale, placement, or display of cigarettes or  
110 smokeless tobacco that is not essentially identical to the provisions of this section and Section  
111 76-10-102 is superceded.

112 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of  
113 age into an area described in Subsection (3) and permits the person younger than 19 years of

114 age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of  
115 providing tobacco as provided for in Section 76-10-104 and the penalties provided for in that  
116 section.

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

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

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

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

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