

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

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the criminal code to make it a violation to cause tobacco products to be ordered or purchased through the Internet or by mail order.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a criminal violation for causing tobacco products to be ordered or purchased through the Internet or by mail; and
- ▶ establishes penalties for violating the prohibition against mail-order or Internet sales and delivery of tobacco products.

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



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

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

30 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products --**

31 **Prohibition of mail-order sales.**

32 (1) As used in this section:

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

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

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

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

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

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

44 (i) is licensed in this state to purchase non-taxed cigarettes, tobacco products, or
45 smokeless tobacco products; and

46 (ii) stores, sells, or otherwise disposes of the tobacco products listed in Subsection
47 (1)(c)(i).

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

49 (e) "Manufacturer" is as defined in Subsection 59-22-202(9).

50 [~~e~~] (f) "Retailer" means any person who sells cigarettes or smokeless tobacco to
51 individuals for personal consumption or who operates a facility where vending machines or
52 self-service displays are permitted under this section.

53 [~~d~~] (g) "Self-service display" means any display of cigarettes or smokeless tobacco
54 products to which the public has access without the intervention of a retail employee.

55 [~~e~~] (h) "Smokeless tobacco" means any product that consists of cut, ground,
56 powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral
57 cavity. "Smokeless tobacco" does not include multi-container packs of smokeless tobacco.

58 (i) "Tobacco product" is as defined in Subsection 59-14-102(10).

59 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes and
60 smokeless tobacco only in a direct, face-to-face exchange between the retailer and the
61 consumer. Examples of methods that are not permitted include vending machines ~~[and]~~,
62 self-service displays, and except as provided in Subsection (6), mail-order sales.

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

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

67 (a) mail-order sales, if the ~~[retailer requires the postal authority or other common~~
68 ~~carrier to:]~~ provisions of Subsection (6) are met; and

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

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

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

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

79 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
80 subdivision or state agency that affects the sale, placement, or display of cigarettes or
81 smokeless tobacco that is not essentially identical to the provisions of this section and Section
82 76-10-102 is superceded.

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

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

90 (6) (a) For purposes of this Subsection (6) and Subsection (7)(b):
91 (i) "Cigarette" is as defined in Subsection (1)(a)(i) and, notwithstanding Subsection
92 (1)(a)(ii), includes a standard 60 carton case.
93 (ii) "Order or purchase" includes:
94 (A) by mail or delivery service;
95 (B) through the Internet or computer network;
96 (C) by telephone; or
97 (D) through some other electronic method.
98 (b) A person, distributor, manufacturer, or retailer shall not:
99 (i) cause cigarettes, tobacco products, or smokeless tobacco products to be ordered or
100 purchased by anyone other than a licensed person; or
101 (ii) with knowledge or reason to know, provide substantial assistance to a person who
102 violates this Subsection (6).
103 ~~[(6)]~~ (7) (a) Violation of Subsection (2) or (3) is a:
104 ~~[(a)]~~ (i) class C misdemeanor on the first offense;
105 ~~[(b)]~~ (ii) class B misdemeanor on the second offense; and
106 ~~[(c)]~~ (iii) class A misdemeanor on the third and all subsequent offenses.
107 (b) (i) For purposes of this Subsection (7)(b), each order or purchase of cigarettes,
108 tobacco products, or smokeless tobacco products, shall constitute a separate violation under
109 Subsection (6).
110 (ii) In addition to any other penalties and remedies available under any other laws of
111 this state, a knowing and intentional violation of Subsection (6) is punishable by:
112 (A) (I) imprisonment for not more than five years;
113 (II) a fine of not more than \$5,000; or
114 (III) both Subsections (7)(b)(ii)(A)(I) and (II);
115 (B) in addition to or in lieu of any penalty imposed under Subsection (7)(b)(ii)(A):
116 (I) a civil penalty, imposed by the attorney general, in an amount not to exceed \$5,000
117 for each violation of Subsection (6); and
118 (II) an injunction to restrain a threatened or actual violation of Subsection (6); and
119 (C) recovery by the state for:
120 (I) the costs of investigation;

121 (II) the cost of expert witness fees;

122 (III) the cost of the action; and

123 (IV) reasonable attorney fees.

124 (iii) A person who knowingly and intentionally violates Subsection (6) has engaged in

125 an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act,

126 and the court shall order any profits, gains, gross receipts, or other benefits from the violation

127 to be disgorged and paid to the state treasurer for deposit in the General Fund.

Legislative Review Note

as of 2-17-09 10:48 AM

Office of Legislative Research and General Counsel

S.B. 228 - Prohibition on Internet or Mail-order Sales of Tobacco Products

Fiscal Note

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 and businesses. Local governments will be impacted through additional incarcerations.
