

Senator Margaret Dayton proposes the following substitute bill:

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

8
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

29

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 to be ordered or purchased by anyone other than a licensed
47 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 in violation of Subsection (2) shall
50 constitute a separate violation under this section.

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

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

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

55 (iii) recovery by the state for:

56 (A) the costs of investigation;

57 (B) the cost of expert witness fees;

58 (C) the cost of the action; and

59 (D) reasonable attorney's fees.

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

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

65 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products.**

66 (1) As used in this section:

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

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

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

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

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

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

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

82 (e) "Smokeless tobacco" means any product that consists of cut, ground, powdered, or
83 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.
84 "Smokeless tobacco" does not include multi-container packs of smokeless tobacco.

85 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes and
86 smokeless tobacco only in a direct, face-to-face exchange between the retailer and the
87 consumer. Examples of methods that are not permitted include vending machines and

88 self-service displays.

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

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

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

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

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

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

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

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

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

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

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

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

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

119

(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.
