

1 **SALE OF SYNTHETIC CANNABINOIDS TO PERSONS**

2 **YOUNGER THAN NINETEEN**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Johnny Anderson**

6 Senate Sponsor: _____

7

LONG TITLE

8 **General Description:**

9
10 This bill modifies the Criminal Code prohibiting the sale, distribution, and other
11 activities relating to products containing a synthetic cannabinoid to any person under 19
12 years of age.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides advertising restrictions for products containing a synthetic cannabinoid;
- 16 ▶ prohibits a person from providing a product containing a synthetic cannabinoid to
17 any person under 19 years of age with a penalty of a class C misdemeanor for the
18 first offense and a class B misdemeanor on the second and subsequent offenses,
19 except for any nonprescription over-the-counter products that have been approved
20 by the federal Food and Drug Administration;
- 21 ▶ provides a penalty for an 18 year old person who buys or attempts to buy, accepts,
22 or has in the person's possession a product containing a synthetic cannabinoid;
- 23 ▶ provides that a person under the age of 18 is subject to the jurisdiction of the
24 juvenile court and provides a penalty if that person buys or attempts to buy, accepts,
25 or has in the person's possession a product containing a synthetic cannabinoid;
- 26 ▶ requires direct, face to face sale of products containing a synthetic cannabinoid with
27 specified exceptions; and



28 ▶ prohibits a gift or distribution of free products containing a synthetic cannabinoid
29 with certain exceptions.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114

37 **76-10-102**, as last amended by Laws of Utah 1986, Chapter 66

38 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114

39 **76-10-104.1**, as enacted by Laws of Utah 2010, Chapter 316

40 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114

41 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114

42 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

43 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193



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

46 Section 1. Section **76-10-101** is amended to read:

47 **76-10-101. Definitions.**

48 As used in this part:

49 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
50 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
51 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
52 in Subsection (2).

53 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
54 ordinary conditions of use, and consists of:

55 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

56 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
57 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
58 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

59 (3) "Electronic cigarette" means any device, other than a cigarette or cigar, intended to
60 deliver vapor containing nicotine into a person's respiratory system.

61 (4) "Place of business" includes:

62 (a) a shop;

63 (b) a store;

64 (c) a factory;

65 (d) a public garage;

66 (e) an office;

67 (f) a theater;

68 (g) a recreation hall;

69 (h) a dance hall;

70 (i) a poolroom;

71 (j) a café;

72 (k) a cafeteria;

73 (l) a cabaret;

74 (m) a restaurant;

75 (n) a hotel;

76 (o) a lodging house;

77 (p) a streetcar;

78 (q) a bus;

79 (r) an interurban or railway passenger coach;

80 (s) a waiting room; and

81 (t) any other place of business.

82 (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
83 lighted smoking equipment.

84 (6) "Synthetic cannabinoid" means any of the following chemical compounds from a
85 natural or synthetic source:

86 (a) AM-694; 1-[5-fluoropentyl]-1H-indol-3-yl]-(2-iodophenyl)methanone;

87 (b) CP 47,497 and its C6, C8, and C9 homologs;

88 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol;

89 (c) HU-210; (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)

90 -6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol;

91 (d) HU-211; Dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-

92 (2-methyloctan-2-yl) -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

93 (e) JWH-015; (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;

94 (f) JWH-018; Naphthalen-1-yl-(pentylindol-3-yl)methanone {also known as
95 1-Pentyl-3-(1-naphthoyl)indole};

96 (g) JWH-019; 1-hexyl-3-(1-naphthoyl)indole;

97 (h) JWH-073; Naphthalen-1-yl(1-butylindol-3yl)methanone {also known as

98 1-Butyl-3-(1-naphthoyl)indole};

99 (i) JWH-081; 4-methoxynaphthalen-1-yl- (1-pentylindol-3-yl)methanone;

100 (j) JWH-122; CAS#619294-47-2; (1-Pentyl-3-(4-methyl-1-naphthoyl)indole);

101 (k) JWH-200; 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole;

102 (l) JWH-250; 1-pentyl-3-(2-methoxyphenylacetyl)indole;

103 (m) JWH-251; 2-(2- methylphenyl)-1-(1- pentyl-1H- indol-3-yl)- ethanone;

104 (n) JWH-398; [1-pentyl-3-(4-chloro-1-naphthoyl)indole; and

105 (o) RCS-8; [1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole {also known as
106 BTW-8 and SR-18].

107 Section 2. Section **76-10-102** is amended to read:

108 **76-10-102. Cigarettes, tobacco, and synthetic cannabinoids -- Advertising**
109 **restrictions -- Warnings in smokeless tobacco advertisements.**

110 (1) It is a class B misdemeanor for any person to display on any billboard, streetcar
111 sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of
112 cigarettes, cigarette papers, cigars, chewing tobacco, ~~[or]~~ smoking tobacco, any product
113 containing a synthetic cannabinoid, or any disguise or substitute of ~~[either]~~ these products,
114 except that a dealer in cigarettes, cigarette papers, tobacco or cigars, or their substitutes, may
115 have a sign on the front of ~~[his]~~ the place of business stating that ~~[he is a dealer in]~~ the business
116 sells these articles; provided that ~~[nothing herein shall be construed to]~~ this section does not
117 prohibit the advertising of cigarettes, cigarette papers, chewing tobacco or smoking tobacco, or
118 any substitute of either, in any newspaper, magazine, or periodical printed or circulating in this
119 state.

120 (2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or

121 periodical published in this state must bear a warning which states: "Use of smokeless tobacco
122 may cause oral cancer and other mouth disorders and is addictive." This warning must be in a
123 conspicuous location and in conspicuous and legible type, in contrast with the typography,
124 layout, and color of all other printed material in the advertisement. For purposes of this
125 subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that
126 is intended to be placed in the oral cavity or nasal passage. In the event the United States
127 Congress passes legislation which requires warnings in advertisements of smokeless tobacco,
128 the specific language required to be placed in advertisements by that legislation shall take
129 precedence over this subsection.

130 Section 3. Section **76-10-104** is amended to read:

131 **76-10-104. Providing a cigar, cigarette, electronic cigarette, tobacco, or synthetic**
132 **cannabinoid products to a minor -- Penalties.**

133 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
134 provides any cigar, cigarette, electronic cigarette, [or] tobacco in any form, or a product
135 containing a synthetic cannabinoid to any person under 19 years of age, is guilty of a class C
136 misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A
137 misdemeanor on subsequent offenses.

138 (2) For purposes of this section "provides":

139 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

140 (b) does not include the acts of the United States Postal Service or other common
141 carrier when engaged in the business of transporting and delivering packages for others or the
142 acts of a person, whether compensated or not, who transports or delivers a package for another
143 person without any reason to know of the package's content.

144 (3) This section does not apply to nonprescription over-the-counter drugs approved by
145 the federal Food and Drug Administration.

146 Section 4. Section **76-10-104.1** is amended to read:

147 **76-10-104.1. Providing tobacco or synthetic cannabinoid paraphernalia to minors**
148 **-- Penalties.**

149 (1) For purposes of this section:

150 (a) "Provides":

151 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

152 (ii) does not include the acts of the United States Postal Service or other common
153 carrier when engaged in the business of transporting and delivering packages for others or the
154 acts of a person, whether compensated or not, who transports or delivers a package for another
155 person without any reason to know of the package's content.

156 (b) "Tobacco or synthetic cannabinoid paraphernalia":

157 (i) means any equipment, product, or material used, or intended for use to package,
158 repack, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, [or]
159 tobacco, or any product containing a synthetic cannabinoid in any form into the human body,
160 including:

161 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
162 screens, permanent screens, hashish heads, or punctured metal bowls;

163 (B) water pipes;

164 (C) carburetion tubes and devices;

165 (D) smoking and carburetion masks;

166 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that
167 has become too small or too short to be held in the hand;

168 (F) chamber pipes;

169 (G) carburetor pipes;

170 (H) electric pipes;

171 (I) air-driven pipes;

172 (J) chillums;

173 (K) bongs; and

174 (L) ice pipes or chillers; and

175 (ii) does not include matches or lighters.

176 (2) Any person who knowingly, intentionally, recklessly, or with criminal negligence
177 provides any tobacco paraphernalia to any person under 19 years of age[;] is guilty of a class C
178 misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.

179 Section 5. Section **76-10-105** is amended to read:

180 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, tobacco,**
181 **or product containing a synthetic cannabinoid by a minor -- Penalty -- Compliance**
182 **officer authority -- Juvenile court jurisdiction.**

183 (1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's
184 possession any cigar, cigarette, electronic cigarette, [or] tobacco, or product containing a
185 synthetic cannabinoid in any form is guilty of a class C misdemeanor and subject to:

186 (a) a minimum fine or penalty of \$60; and

187 (b) participation in a court-approved [~~tobacco~~] education program, which may include
188 a participation fee.

189 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the
190 person's possession any cigar, cigarette, electronic cigarette, [or] tobacco, or product containing
191 a synthetic cannabinoid in any form is subject to the jurisdiction of the Juvenile Court and:

192 (a) a minimum fine or penalty of \$60; and

193 (b) participation in a court-approved [~~tobacco~~] education program, which may include
194 a participation fee.

195 (3) A compliance officer appointed by a board of education under Section 53A-3-402
196 may issue citations for violations of this section committed on school property. Cited
197 violations shall be reported to the appropriate juvenile court.

198 Section 6. Section **76-10-105.1** is amended to read:

199 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products,**
200 **electronic cigarettes, and products containing a synthetic cannabinoid -- Supremacy**
201 **clause -- Penalties.**

202 (1) As used in this section:

203 (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or
204 delivers nicotine and is intended for use by a consumer in a cigarette.

205 (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or
206 delivers nicotine and is intended to be smoked by a consumer in a pipe.

207 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
208 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
209 or who operates a facility where a vending machine or a self-service display is permitted under
210 Subsection (3)(b).

211 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,
212 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access
213 without the intervention of a retail employee.

214 (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or
215 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

216 (f) "Synthetic cannabinoid" has the same definition as in Section 76-10-101 and may
217 also be referred to or marketed under names such as K2, Spike 99, Yucatan Fire, Spice, Genie,
218 or Zohai. Synthetic cannabinoids are often sprayed onto herbs or other substances and when
219 smoked or ingested can produce a high similar to marijuana.

220 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic
221 cigarettes, cigars, cigarette tobacco, pipe tobacco, [~~and~~] smokeless tobacco, and products
222 containing a synthetic cannabinoid only in a direct, face-to-face exchange between:

223 (i) an employee of the retailer; and

224 (ii) the purchaser.

225 (b) Examples of methods that are not permitted include vending machines and
226 self-service displays.

227 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
228 containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, [~~or~~]
229 smokeless tobacco, or products containing a synthetic cannabinoid if the locked cabinets are
230 accessible only to the retailer or the retailer's employees.

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

232 (a) mail-order sales, if the provisions of Section 59-14-509 are met;

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

238 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from
239 tobacco and tobacco related products and where the retailer ensures that no person younger
240 than 19 years of age is present, or permitted to enter at any time, unless accompanied by a
241 parent or legal guardian.

242 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
243 subdivision of the state or by a state agency that affects the sale, placement, or display of
244 cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, [~~or~~] smokeless tobacco,

245 or products containing a synthetic cannabinoid that is not essentially identical to the provisions
246 of this section and Section 76-10-102 is superseded.

247 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of
248 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection
249 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
250 cigar, cigarette, electronic cigarette, [or] tobacco in any form, or any product containing a
251 synthetic cannabinoid is guilty of providing tobacco as provided for in Section 76-10-104 and
252 the penalties provided for in that section.

253 (b) Nothing in this section may be construed as permitting a person to provide tobacco
254 or a product containing a synthetic cannabinoid to a minor in violation of Section 76-10-104.

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

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

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

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

259 Section 7. Section **76-10-111** is amended to read:

260 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
261 **electronic cigarettes -- Exceptions.**

262 (1) The Legislature finds that:

263 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
264 use those products because research indicates that they may cause mouth or oral cancers;

265 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

266 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
267 tobacco products; and

268 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
269 the interest of the health of the citizens of this state.

270 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
271 wholesaler, and retailer to give or distribute without charge any smokeless tobacco, chewing
272 tobacco, [or] electronic cigarette, or product containing a synthetic cannabinoid in this state.

273 (b) Any person who violates this [section] Subsection (2) is guilty of a class C
274 misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent
275 offense.

276 (3) (a) Smokeless tobacco, chewing tobacco, ~~[or]~~ an electronic cigarette, or any product
277 containing a synthetic cannabinoid may be distributed to adults without charge at professional
278 conventions where the general public is excluded.

279 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
280 smokeless tobacco, chewing tobacco, ~~[or]~~ an electronic cigarette, or any product containing a
281 synthetic cannabinoid to a person of legal age upon the person's purchase of another tobacco
282 product or electronic cigarette.

283 Section 8. Section 76-10-112 is amended to read:

284 **76-10-112. Prohibition of distribution of cigarettes, other tobacco products, or**
285 **products containing synthetic cannabinoids -- Exceptions.**

286 (1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler,
287 or retailer to give or distribute cigarettes ~~[or]~~, other tobacco products, or products containing a
288 synthetic cannabinoid in this state without charge. Any person who violates this subsection is
289 guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any
290 subsequent offense.

291 (2) Cigarettes ~~[and]~~, other tobacco products, and products containing synthetic
292 cannabinoids may be distributed to adults without charge at professional conventions where the
293 general public is excluded.

294 (3) The prohibition described in Subsection (1) does not apply to retailers,
295 manufacturers, or distributors who give cigarettes ~~[or]~~, other tobacco products, or a product
296 containing a synthetic cannabinoid to persons of legal age upon their purchase of cigarettes or
297 other tobacco products.

Legislative Review Note
as of 12-2-10 2:20 PM

Office of Legislative Research and General Counsel