

Representative Kraig Powell proposes the following substitute bill:

TOBACCO SHOP AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends the Utah Criminal Code's cigarette and tobacco product face-to-face sale requirement.

Highlighted Provisions:

This bill:

- ▶ clarifies that an individual less than 19 years old cannot be present in a tobacco specialty shop; and
- ▶ makes technical and conforming amendments.

Money 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 2010, Chapter 114

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

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



26 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
27 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

28 (1) As used in this section:

29 ~~[(a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or~~
30 ~~delivers nicotine and is intended for use by a consumer in a cigarette.]~~

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

33 (a) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

34 (b) (i) "Face-to-face exchange" means a transaction made in person between an
35 individual and a retailer or retailer's employee.

36 (ii) "Face-to-face exchange" does not include a sale through a:

37 (A) vending machine; or

38 (B) self-service display.

39 (c) "Retailer" means a person who ~~[sells cigarettes, electronic cigarettes, cigars,~~
40 ~~cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption~~
41 ~~or who]~~:

42 (i) sells a cigarette, tobacco, or an electronic cigarette to an individual for personal
43 consumption; or

44 (ii) ~~[who] operates a facility [where a vending machine or a self-service display is~~
45 ~~permitted under Subsection (3)(b)]~~ with a vending machine that sells a cigarette, tobacco, or an
46 electronic cigarette.

47 (d) "Self-service display" means a display of ~~[cigarettes, electronic cigarettes, cigars,~~
48 ~~cigarette tobacco, pipe tobacco, or smokeless tobacco products]~~ a cigarette, tobacco, or an
49 electronic cigarette to which the public has access without the intervention of a ~~[retail]~~ retailer
50 or retailer's employee.

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

53 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

54 (f) "Tobacco specialty shop" means a retailer with a physical location that derives at
55 least 80% of its total sales from the sale of cigarettes, tobacco, or electronic cigarettes.

56 (2) ~~[(a)]~~ Except as provided in Subsection (3), a retailer may sell ~~[cigarettes, electronic~~

57 ~~cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct,~~
58 ~~face-to-face exchange between:] a cigarette, tobacco, or an electronic cigarette only in a
59 face-to-face exchange.~~

60 ~~[(i) an employee of the retailer; and]~~

61 ~~[(ii) the purchaser.]~~

62 ~~[(b) Examples of methods that are not permitted include vending machines and~~
63 ~~self-service displays.]~~

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

67 ~~[(3) The following sales are permitted as exceptions to Subsection (2):]~~

68 ~~[(a) mail-order sales, if the provisions of Section 59-14-509 are met;]~~

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

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

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

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)(b) or into a retail store as described in Subsection~~
85 ~~(3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a~~
86 ~~cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as~~
87 ~~provided for in Section 76-10-104 and the penalties provided for in that 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 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

91 (a) a mail-order, telephone, or Internet sale made in compliance with Section
92 [59-14-509](#);

93 (b) a sale from a vending machine or self-service display that is located in an area of a
94 retailer's facility:

95 (i) that is distinct and separate from the rest of the facility; and

96 (ii) where the retailer does not allow an individual who is less than 19 years old to be
97 present, unless the individual is accompanied by a parent or legal guardian; or

98 (c) a sale at a tobacco specialty shop.

99 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
100 specialty shop unless accompanied by a parent or legal guardian.

101 (5) A parent or legal guardian of an individual who is less than 19 years old who
102 accompanies the individual into an area described in Subsection (3)(b), or into a tobacco
103 specialty shop, may not allow the individual to purchase a cigarette, tobacco, or an electronic
104 cigarette.

105 (6) ~~[Violation]~~ A violation of Subsection (2) or ~~[(3)]~~ (4) is a:

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

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

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

109 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
110 under Section [76-10-104](#).

111 (8) Any ordinance, regulation, or rule adopted by the governing body of a political
112 subdivision of the state or by a state agency that affects the sale, placement, or display of
113 cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of
114 this section and Section [76-10-102](#) is superseded.