

# HB0131S01 compared with HB0131

~~deleted text~~ shows text that was in HB0131 but was deleted in HB0131S01.

inserted text shows text that was not in HB0131 but was inserted into HB0131S01.

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Representative Kraig Powell proposes the following substitute bill:

## TOBACCO SHOP AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kraig Powell**

Senate Sponsor: \_\_\_\_\_

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### 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

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### Utah Code Sections Affected:

AMENDS:

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(A) vending machine; or

(B) self-service display.

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

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

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

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

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

~~(e) "Tobacco" means [{the same as that term is defined in Section 59-14-102}](#) any product, except a cigarette, made of or containing tobacco.~~

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

~~(2) [(a)] Except as provided in Subsection (3), a retailer may sell [cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct, face-to-face exchange between:] a cigarette, tobacco, or an electronic cigarette only in a face-to-face exchange.~~

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

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

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

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

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

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

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

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

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

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that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.]

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

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

(3) The face-to-face sale requirement in Subsection (2) does not apply to:

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

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

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

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

(c) a sale at a tobacco specialty shop.

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

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

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

(a) class C misdemeanor on the first offense;

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

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

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

(8) Any ordinance, regulation, or rule adopted by the governing body of a political

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subdivision of the state or by a state agency that affects the sale, placement, or display of cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.

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### Legislative Review Note

— as of 1-6-15 5:27 PM

— Office of Legislative Research and General Counsel}