

1 **TOBACCO SHOP AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kraig Powell**

5 Senate Sponsor: Allen M. Christensen

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to tobacco shops.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that an individual less than 19 years old cannot, under certain conditions,
13 be present in a tobacco specialty shop; and
14 ▶ modifies a definition of electronic cigarette.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114

22 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114

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

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

26 **76-10-101. Definitions.**

27 As used in this part:

28 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
29 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in

30 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
31 in Subsection (2).

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

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

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

38 (3) (a) "Electronic cigarette" means [~~any device, other than a cigarette or cigar,~~
39 ~~intended to deliver vapor containing nicotine into a person's respiratory system.];~~

40 (i) an electronic device used to deliver or capable of delivering vapor containing
41 nicotine to an individual's respiratory system; or

42 (ii) any component of or accessory intended for use with the device described in
43 Subsection (3)(a)(i).

44 (b) "Electronic cigarette" includes an e-cigarette as defined in Section [26-38-2](#).

45 (4) "Electronic cigarette product" means an electronic cigarette or an electronic
46 cigarette substance.

47 (5) "Electronic cigarette substance" means any substance, including liquid containing
48 nicotine, used or intended for use in an electronic cigarette.

49 [~~(4)~~] (6) "Place of business" includes:

50 (a) a shop;

51 (b) a store;

52 (c) a factory;

53 (d) a public garage;

54 (e) an office;

55 (f) a theater;

56 (g) a recreation hall;

57 (h) a dance hall;

- 58 (i) a poolroom;
- 59 (j) a café;
- 60 (k) a cafeteria;
- 61 (l) a cabaret;
- 62 (m) a restaurant;
- 63 (n) a hotel;
- 64 (o) a lodging house;
- 65 (p) a streetcar;
- 66 (q) a bus;
- 67 (r) an interurban or railway passenger coach;
- 68 (s) a waiting room; and
- 69 (t) any other place of business.

70 ~~[(5)]~~ (7) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
71 lighted smoking equipment.

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

73 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
74 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

75 (1) As used in this section:

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

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

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

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

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

84 (A) vending machine; or

85 (B) self-service display.

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

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

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

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

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

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

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

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

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

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

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

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

114 ~~[(3) The following sales are permitted as exceptions to Subsection (2):]~~
115 ~~[(a) mail-order sales, if the provisions of Section 59-14-509 are met;]~~
116 ~~[(b) sales from vending machines, including vending machines that sell packaged,~~
117 ~~single cigarettes or cigars, and self-service displays that are located in a separate and defined~~
118 ~~area within a facility where the retailer ensures that no person younger than 19 years of age is~~
119 ~~present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian;~~
120 ~~and]~~
121 ~~[(c) sales by a retailer from a retail store which derives at least 80% of its revenue from~~
122 ~~tobacco and tobacco related products and where the retailer ensures that no person younger~~
123 ~~than 19 years of age is present, or permitted to enter at any time, unless accompanied by a~~
124 ~~parent or legal guardian.]]~~
125 ~~[(4) Any ordinance, regulation, or rule adopted by the governing body of a political~~
126 ~~subdivision of the state or by a state agency that affects the sale, placement, or display of~~
127 ~~cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco~~
128 ~~that is not essentially identical to the provisions of this section and Section 76-10-102 is~~
129 ~~superseded.]]~~
130 ~~[(5) (a) A parent or legal guardian who accompanies a person younger than 19 years of~~
131 ~~age into an area described in Subsection (3)(b) or into a retail store as described in Subsection~~
132 ~~(3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a~~
133 ~~cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as~~
134 ~~provided for in Section 76-10-104 and the penalties provided for in that section.]]~~
135 ~~[(b) Nothing in this section may be construed as permitting a person to provide tobacco~~
136 ~~to a minor in violation of Section 76-10-104.]]~~
137 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
138 (a) a mail-order, telephone, or Internet sale made in compliance with Section
139 59-14-509;
140 (b) a sale from a vending machine or self-service display that is located in an area of a
141 retailer's facility;

- 142 (i) that is distinct and separate from the rest of the facility; and
- 143 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
- 144 present; or
- 145 (c) a sale at a tobacco specialty shop.
- 146 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
- 147 specialty shop unless the individual is:
- 148 (a) accompanied by a parent or legal guardian;
- 149 (b) present at the tobacco shop for a bona fide commercial purpose other than to
- 150 purchase a cigarette, tobacco, or an electronic cigarette; or
- 151 (c) 18 years old or older and an active duty member of the United States Armed Forces,
- 152 as demonstrated by a valid, government-issued military identification card.
- 153 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
- 154 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the
- 155 individual to purchase a cigarette, tobacco, or an electronic cigarette product.
- 156 (6) [~~Violation~~] A violation of Subsection (2) or [~~(3)~~] (4) is a:
- 157 (a) class C misdemeanor on the first offense;
- 158 (b) class B misdemeanor on the second offense; and
- 159 (c) class A misdemeanor on the third and all subsequent offenses.
- 160 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
- 161 under Section [76-10-104](#).
- 162 (8) Any ordinance, regulation, or rule adopted by the governing body of a political
- 163 subdivision of the state or by a state agency that affects the sale, placement, or display of
- 164 cigarettes, tobacco, or electronic cigarette products that is not essentially identical to the
- 165 provisions of this section and Section [76-10-102](#) is superseded.
- 166 (9) Subsection (8) does not apply to the adoption or enforcement of a land use
- 167 ordinance by a municipal or county government.