

CIGARETTE, TOBACCO, AND NICOTINE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes related to cigarettes, tobacco, and nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms and amends definitions;
- ▶ amends the definition of tobacco product to include certain nicotine products and provides for the taxation of those products;
- ▶ amends criminal provisions related to cigarettes and tobacco products; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

59-14-102, as last amended by Laws of Utah 2011, Chapter 229

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

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

76-10-103, as enacted by Laws of Utah 1973, Chapter 196

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



28 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
29 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114
30 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114



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

33 Section 1. Section **59-14-102** is amended to read:

34 **59-14-102. Definitions.**

35 As used in this chapter:

36 (1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

37 (a) regardless of:

38 (i) the size of the roll;

39 (ii) the shape of the roll; or

40 (iii) whether the tobacco is:

41 (A) flavored;

42 (B) adulterated; or

43 (C) mixed with any other ingredient; and

44 (b) if the wrapper or cover of the roll is made of paper or any other substance or
45 material except tobacco.

46 (2) "Consumer" means a person that is not required:

47 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or

48 (b) under Section 59-14-301 to obtain a license under Section 59-14-202.

49 (3) "Counterfeit cigarette" means:

50 (a) a cigarette that has a false manufacturing label; or

51 (b) a package of cigarettes bearing a counterfeit tax stamp.

52 (4) "E-cigarette" means an electronic oral device that:

53 (a) provides a vapor of nicotine;

54 (b) simulates smoking through its use or through inhalation of the vapor generated by
55 the device;

56 (c) is not approved by the United States Food and Drug Administration as an aid in
57 quitting the use of tobacco or a nicotine product;

58 (d) is composed of a heating element, battery, or electronic circuit; and

59 (e) is marketed, manufactured, distributed, or sold as:
 60 (i) an e-cigarette;
 61 (ii) an e-cigar;
 62 (iii) an e-pipe; or
 63 (iv) another electronic oral device if the electronic oral device meets the requirements
 64 of Subsections (4)(a) through (d).

65 (5) "E-cigarette cartridge" means a container that:

66 (a) has openings on each end;

67 (b) serves as a liquid reservoir and mouthpiece;

68 (c) allows the passage of:

69 (i) liquid to an atomizer; and

70 (ii) vapor from the atomizer to the user's mouth; and

71 (d) contains liquid for producing vapor in an ~~H~~→ [electronic cigarette] e-cigarette ←~~H~~ .

72 ~~[(4)]~~ (6) "Importer" means a person who imports into the United States, either directly
 73 or indirectly, a finished cigarette for sale or distribution.

74 ~~[(5)]~~ (7) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or
 75 any other person doing business as a distributor or retailer of cigarettes on tribal lands located
 76 in the state.

77 ~~[(6)]~~ (8) "Little cigar" means a roll for smoking:

78 (a) made wholly or in part of tobacco;

79 (b) that uses an integrated cellulose acetate filter or other similar filter; and

80 (c) that is wrapped in a substance:

81 (i) containing tobacco; and

82 (ii) that is not exclusively natural leaf tobacco.

83 ~~[(7)]~~ (9) "Manufacturer" means a person who manufactures, fabricates, assembles,
 84 processes, or labels a finished cigarette.

85 ~~[(8)]~~ (10) "Moist snuff" means tobacco that:

86 (a) is finely:

87 (i) cut;

88 (ii) ground; or

89 (iii) powdered;

90 (b) has at least 45% moisture content, as determined by the commission by rule made
 91 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

92 (c) is not intended to be:

93 (i) smoked; or

94 (ii) placed in the nasal cavity; and

95 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
 96 distributed in single-use units, including:

97 (i) tablets;

98 (ii) lozenges;

99 (iii) strips;

100 (iv) sticks; or

101 (v) packages containing multiple single-use units.

102 (11) "Nicotine candy" means an item that:

103 (a) contains:

104 (i) nicotine; and

105 (ii) a natural or artificial sweetener;

106 (b) is ingested orally; and

107 (c) is not approved by the United States Food and Drug Administration as an aid in
 108 quitting the use of tobacco or a nicotine product.

109 (12) "Nicotine product" means:

110 (a) ~~is~~ an e-cigarette;

111 ~~— (b) is~~ an e-cigarette cartridge;

112 ~~is~~ (c) is ~~is~~ nicotine candy; or

113 ~~is~~ (d) is ~~is~~ any other product containing nicotine, except for

113a an e-cigarette, that ~~is~~ ;

114 ~~— (i) dissolves in the mouth; and~~

115 ~~— (ii) is~~ not approved by the United States Food and Drug Administration as an aid in
 116 quitting the use of tobacco or nicotine.

117 ~~(9)~~ (13) "Retailer" means a person that:

118 (a) sells or distributes a cigarette to a consumer in the state; or

119 (b) intends to sell or distribute a cigarette to a consumer in the state.

120 ~~(10)~~ (14) "Stamp" means the indicia required to be placed on a cigarette package that

121 evidences payment of the tax on cigarettes required by Section 59-14-205.

122 [~~(H)~~] (15) (a) "Tobacco product" means:

123 (i) a product made of, or containing, tobacco~~[-]; or~~

124 (ii) a nicotine product.

125 (b) "Tobacco product" includes:

126 (i) a little cigar; or

127 (ii) moist snuff.

128 (c) "Tobacco product" does not include a cigarette.

129 [~~(I)~~] (16) "Tribal lands" means land held by the United States in trust for a federally
130 recognized Indian tribe.

131 Section 2. Section **76-10-101** is amended to read:

132 **76-10-101. Definitions.**

133 As used in this part:

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

138 (2) "Cigarette" [~~means a product that contains nicotine, is intended to be burned under~~
139 ~~ordinary conditions of use, and consists of:~~] is as defined in Section 59-14-102.

140 [~~(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco;~~
141 ~~or]~~

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

145 (3) "Electronic cigarette" [~~means any device, other than a cigarette or cigar, intended to~~
146 ~~deliver vapor containing nicotine into a person's respiratory system]~~ has the same meaning as
147 e-cigarette, as defined in Section 59-14-102.

148 (4) "Place of business" includes:

149 (a) a shop;

150 (b) a store;

151 (c) a factory;

- 152 (d) a public garage;
- 153 (e) an office;
- 154 (f) a theater;
- 155 (g) a recreation hall;
- 156 (h) a dance hall;
- 157 (i) a poolroom;
- 158 (j) a café;
- 159 (k) a cafeteria;
- 160 (l) a cabaret;
- 161 (m) a restaurant;
- 162 (n) a hotel;
- 163 (o) a lodging house;
- 164 (p) a streetcar;
- 165 (q) a bus;
- 166 (r) an interurban or railway passenger coach;
- 167 (s) a waiting room; and
- 168 (t) any other place of business.

169 (5) "Retail tobacco specialty business" is as defined in Section 10-8-41.6.

170 [~~(5)~~] (6) "Smoking" [means the possession of any lighted cigar, cigarette, pipe, or other
171 lighted smoking equipment] is as defined in Section 26-38-2.

172 (7) "Tobacco product" is as defined in Section 59-14-102.

173 Section 3. Section **76-10-102** is amended to read:

174 **76-10-102. Cigarettes and tobacco -- Advertising restrictions -- Warnings in**
175 **smokeless tobacco advertisements.**

176 (1) It is a class B misdemeanor for any person to display on any billboard, streetcar
177 sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of
178 cigarettes, cigarette papers, cigars, chewing tobacco, ~~[or]~~ smoking tobacco, or other tobacco
179 product, or any disguise or substitute of either, except that a dealer in cigarettes, cigarette
180 papers, a tobacco product, or cigars, or their substitutes, may have a sign on the front of ~~[his]~~
181 the dealer's place of business stating that ~~[he]~~ the dealer is a dealer in the articles~~;~~, provided
182 that nothing herein shall be construed to prohibit the advertising of cigarettes, cigarette papers,

183 chewing tobacco [or], smoking tobacco, or other tobacco product, or any substitute of either, in
184 any newspaper, magazine or periodical printed or circulating in this state.

185 (2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or
186 periodical published in this state must bear a warning which states: "Use of smokeless tobacco
187 may cause oral cancer and other mouth disorders and is addictive." This warning must be in a
188 conspicuous location and in conspicuous and legible type, in contrast with the typography,
189 layout, and color of all other printed material in the advertisement. For purposes of this
190 subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that
191 is intended to be placed in the oral cavity or nasal passage. In the event the United States
192 Congress passes legislation which requires warnings in advertisements of smokeless tobacco,
193 the specific language required to be placed in advertisements by that legislation shall take
194 precedence over this subsection.

195 Section 4. Section **76-10-103** is amended to read:

196 **76-10-103. Permitting minors to use tobacco in place of business -- Permitting**
197 **minors to enter a retail tobacco specialty business.**

198 (1) It is a class C misdemeanor for the proprietor of any place of business to knowingly
199 permit persons under age 19 to frequent a place of business while they are using a cigarette or a
200 tobacco product.

201 (2) It is a class C misdemeanor for the proprietor of a retail tobacco specialty business
202 to knowingly permit a person under age 19 to enter the retail tobacco specialty business.

203 Section 5. Section **76-10-104** is amended to read:

204 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
205 **-- Penalties.**

206 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
207 provides any cigar, cigarette, electronic cigarette, or other tobacco product in any form, to any
208 person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B
209 misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

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

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

212 (b) does not include the acts of the United States Postal Service or other common
213 carrier when engaged in the business of transporting and delivering packages for others or the

214 acts of a person, whether compensated or not, who transports or delivers a package for another
215 person without any reason to know of the package's content.

216 Section 6. Section **76-10-105** is amended to read:

217 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
218 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

219 (1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's
220 possession any cigar, cigarette, electronic cigarette, or other tobacco product in any form is
221 guilty of a class C misdemeanor and subject to:

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

223 (b) participation in a court-approved tobacco education program, which may include a
224 participation fee.

225 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the
226 person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject
227 to the jurisdiction of the Juvenile Court and:

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

229 (b) participation in a court-approved tobacco education program, which may include a
230 participation fee.

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

234 Section 7. Section **76-10-105.1** is amended to read:

235 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes and tobacco**
236 **products -- Supremacy clause -- Penalties.**

237 (1) As used in this section:

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

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

242 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
243 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
244 or who operates a facility where a vending machine or a self-service display is permitted under

245 Subsection (3)(b).

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

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

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

254 (i) an employee of the retailer; and

255 (ii) the purchaser.

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

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

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

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

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

269 (c) sales ~~[by a retailer from a retail store which derives at least 80% of its revenue from~~
270 ~~tobacco and tobacco related products and where the retailer ensures that no person younger~~
271 ~~than 19 years of age is present, or permitted to enter at any time, unless accompanied by a~~
272 ~~parent or legal guardian]~~ from a vending machine or a self-service display, including a vending
273 machine that sells packaged, single cigarettes or cigars, if the vending machine or self-service
274 display is located in a retail tobacco specialty business.

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

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

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

285 ~~[(b)]~~ (5) Nothing in this section may be construed as permitting a person to provide
286 tobacco to a minor in violation of Section 76-10-104.

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

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

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

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

291 Section 8. Section **76-10-111** is amended to read:

292 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
293 **electronic cigarettes -- Exceptions.**

294 (1) The Legislature finds that:

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

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

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

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

302 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
303 and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, [or]
304 electronic cigarette, or other tobacco product in this state. Any person who violates this section
305 is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor
306 for any subsequent offense.

307 (3) (a) Smokeless tobacco, chewing tobacco, [or] an electronic cigarette, or other
308 tobacco product may be distributed to adults without charge at professional conventions where
309 the general public is excluded.

310 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
311 smokeless tobacco, chewing tobacco, [or] an electronic cigarette, or other tobacco product to a
312 person of legal age upon the person's purchase of another tobacco product or electronic
313 cigarette.

314 Section 9. **Effective date.**

315 This bill takes effect on July 1, 2013.

Legislative Review Note
as of 2-21-13 4:09 PM

Office of Legislative Research and General Counsel