

FLAVORED TOBACCO AND NICOTINE PRODUCT**RESTRICTION ACT**

2011 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the Uniform Driver License Act, provisions relating to the state system of public education, the Utah Criminal Code, and the Utah Code of Criminal Procedure to prohibit the provision, obtaining, and possession of a flavored tobacco product and to place prohibitions and restrictions on the provision, obtaining, and possession of a nicotine product.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it a class A misdemeanor to knowingly acquire, use, display, or transfer a false or altered driver license certificate or identification card to procure a nicotine product;
- ▶ provides that the State Board of Education may, and local boards of education and governing boards of charter schools shall, adopt rules that prohibit the unlawful use, possession, or distribution of a nicotine product;
- ▶ prohibits and provides penalties for the provision, obtaining, or possession of a flavored tobacco product;
- ▶ subject to certain exceptions, prohibits and provides penalties for the provision, obtaining, or possession of a nicotine product;
- ▶ addresses enforcement of, and investigation of violations of, the provisions of this bill; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **53-3-229 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114

36 **53-3-229 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 114

37 and 276

38 **53-3-810 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114

39 **53-3-810 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 114

40 and 276

41 **53A-11-908**, as last amended by Laws of Utah 2010, Chapter 114

42 **76-8-311.3**, as last amended by Laws of Utah 2010, Chapter 114

43 **77-39-101 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114

44 **77-39-101 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 114

45 and 276

46 ENACTS:

47 **76-10-3001**, Utah Code Annotated 1953

48 **76-10-3002**, Utah Code Annotated 1953

49 **76-10-3003**, Utah Code Annotated 1953

50 **76-10-3004**, Utah Code Annotated 1953

51 **76-10-3005**, Utah Code Annotated 1953

52 **76-10-3006**, Utah Code Annotated 1953

53 **76-10-3007**, Utah Code Annotated 1953

54



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

56 Section 1. Section **53-3-229 (Superseded 07/01/11)** is amended to read:

57 **53-3-229 (Superseded 07/01/11). Prohibited uses of license certificate -- Penalty.**

58 (1) It is a class C misdemeanor for a person to:

59 (a) lend or knowingly permit the use of a license certificate issued to the person, by a
60 person not entitled to it;

61 (b) display or to represent as the person's own a license certificate not issued to the
62 person;

63 (c) refuse to surrender to the division or a peace officer upon demand any license
64 certificate issued by the division;

65 (d) use a false name or give a false address in any application for a license or any
66 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to
67 knowingly conceal a material fact or otherwise commit a fraud in the application;

68 (e) display a canceled, denied, revoked, suspended, or disqualified driver license
69 certificate as a valid driver license certificate;

70 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
71 driver license certificate issued by a governmental entity if the item is not an authentic driver
72 license certificate issued by that governmental entity; or

73 (g) alter any information on an authentic driver license certificate so that it no longer
74 represents the information originally displayed.

75 (2) The provisions of Subsection (1)(e) do not prohibit the use of a person's driver
76 license certificate as a means of personal identification.

77 (3) It is a class A misdemeanor to knowingly:

78 (a) issue a driver license certificate with false or fraudulent information;

79 (b) issue a driver license certificate to a person younger than 21 years of age if the
80 driver license certificate is not distinguished as required for a person younger than 21 years of
81 age under Section 53-3-207; or

82 (c) acquire, use, display, or transfer a false or altered driver license certificate to
83 procure:

84 (i) a cigarette;

85 (ii) an electronic cigarette, as defined in Section 76-10-101;

86 (iii) tobacco; [or]

87 (iv) a tobacco product[-]; or

88 (v) a nicotine product, as defined in Section 76-10-3002.

89 (4) A person may not use, display, or transfer a false or altered driver license certificate
90 to procure alcoholic beverages, gain admittance to a place where alcoholic beverages are sold
91 or consumed, or obtain employment that may not be obtained by a minor in violation of
92 Section 32A-1-301.

93 (5) It is a third degree felony if a person's acquisition, use, display, or transfer of a false

94 or altered driver license certificate:

95 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or

96 (b) aids or furthers the person's efforts to commit a violent felony.

97 Section 2. Section **53-3-229 (Effective 07/01/11)** is amended to read:

98 **53-3-229 (Effective 07/01/11). Prohibited uses of license certificate -- Penalty.**

99 (1) It is a class C misdemeanor for a person to:

100 (a) lend or knowingly permit the use of a license certificate issued to the person, by a
101 person not entitled to it;

102 (b) display or to represent as the person's own a license certificate not issued to the
103 person;

104 (c) refuse to surrender to the division or a peace officer upon demand any license
105 certificate issued by the division;

106 (d) use a false name or give a false address in any application for a license or any
107 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to
108 knowingly conceal a material fact or otherwise commit a fraud in the application;

109 (e) display a canceled, denied, revoked, suspended, or disqualified driver license
110 certificate as a valid driver license certificate;

111 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
112 driver license certificate issued by a governmental entity if the item is not an authentic driver
113 license certificate issued by that governmental entity; or

114 (g) alter any information on an authentic driver license certificate so that it no longer
115 represents the information originally displayed.

116 (2) The provisions of Subsection (1)(e) do not prohibit the use of a person's driver
117 license certificate as a means of personal identification.

118 (3) It is a class A misdemeanor to knowingly:

119 (a) issue a driver license certificate with false or fraudulent information;

120 (b) issue a driver license certificate to a person younger than 21 years of age if the
121 driver license certificate is not distinguished as required for a person younger than 21 years of
122 age under Section 53-3-207; or

123 (c) acquire, use, display, or transfer a false or altered driver license certificate to
124 procure:

- 125 (i) a cigarette;
- 126 (ii) an electronic cigarette, as defined in Section 76-10-101;
- 127 (iii) tobacco; ~~or~~
- 128 (iv) a tobacco product~~[-];~~ or
- 129 (v) a nicotine product, as defined in Section 76-10-3002.

130 (4) A person may not use, display, or transfer a false or altered driver license certificate
131 to procure alcoholic beverages, gain admittance to a place where alcoholic beverages are sold
132 or consumed, or obtain employment that may not be obtained by a minor in violation of
133 Section 32B-1-403.

134 (5) It is a third degree felony if a person's acquisition, use, display, or transfer of a false
135 or altered driver license certificate:

- 136 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or
- 137 (b) aids or furthers the person's efforts to commit a violent felony.

138 Section 3. Section **53-3-810 (Superseded 07/01/11)** is amended to read:

139 **53-3-810 (Superseded 07/01/11). Prohibited uses of identification card --**

140 **Penalties.**

141 (1) It is a class C misdemeanor to:

142 (a) lend or knowingly permit the use of an identification card issued to the person, by a
143 person not entitled to it;

144 (b) display or to represent as the person's own an identification card not issued to the
145 person;

146 (c) refuse to surrender to the division or a peace officer upon demand any identification
147 card issued by the division;

148 (d) use a false name or give a false address in any application for an identification card
149 or any renewal or duplicate of the identification card, or to knowingly make a false statement,
150 or to knowingly conceal a material fact in the application;

151 (e) display a revoked identification card as a valid identification card;

152 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
153 identification card issued by a governmental entity if the item is not an authentic identification
154 card issued by that governmental entity; or

155 (g) alter any information contained on an authentic identification card so that it no

156 longer represents the information originally displayed.

157 (2) It is a class A misdemeanor to knowingly:

158 (a) issue an identification card with false or fraudulent information;

159 (b) issue an identification card to any person younger than 21 years of age if the
160 identification card is not distinguished as required for a person younger than 21 years of age
161 under Section 53-3-806; or

162 (c) acquire, use, display, or transfer a false or altered identification card to procure:

163 (i) a cigarette;

164 (ii) an electronic cigarette, as defined in Section 76-10-101;

165 (iii) tobacco; [or]

166 (iv) a tobacco product[-]; or

167 (v) a nicotine product, as defined in Section 76-10-3002.

168 (3) A person may not knowingly use, display, or transfer a false or altered
169 identification card to procure alcoholic beverages, gain admittance to a place where alcoholic
170 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
171 violation of Section 32A-1-301.

172 (4) It is a third degree felony if a person's acquisition, use, display, or transfer of a false
173 or altered identification card:

174 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or

175 (b) aids or furthers the person's efforts to commit a violent felony.

176 Section 4. Section **53-3-810 (Effective 07/01/11)** is amended to read:

177 **53-3-810 (Effective 07/01/11). Prohibited uses of identification card -- Penalties.**

178 (1) It is a class C misdemeanor to:

179 (a) lend or knowingly permit the use of an identification card issued to the person, by a
180 person not entitled to it;

181 (b) display or to represent as the person's own an identification card not issued to the
182 person;

183 (c) refuse to surrender to the division or a peace officer upon demand any identification
184 card issued by the division;

185 (d) use a false name or give a false address in any application for an identification card
186 or any renewal or duplicate of the identification card, or to knowingly make a false statement,

187 or to knowingly conceal a material fact in the application;

188 (e) display a revoked identification card as a valid identification card;

189 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
190 identification card issued by a governmental entity if the item is not an authentic identification
191 card issued by that governmental entity; or

192 (g) alter any information contained on an authentic identification card so that it no
193 longer represents the information originally displayed.

194 (2) It is a class A misdemeanor to knowingly:

195 (a) issue an identification card with false or fraudulent information;

196 (b) issue an identification card to any person younger than 21 years of age if the
197 identification card is not distinguished as required for a person younger than 21 years of age
198 under Section 53-3-806; or

199 (c) acquire, use, display, or transfer a false or altered identification card to procure:

200 (i) a cigarette;

201 (ii) an electronic cigarette, as defined in Section 76-10-101;

202 (iii) tobacco; ~~or~~

203 (iv) a tobacco product~~[-]; or~~

204 (v) a nicotine product, as defined in Section 76-10-3002.

205 (3) A person may not knowingly use, display, or transfer a false or altered
206 identification card to procure alcoholic beverages, gain admittance to a place where alcoholic
207 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
208 violation of Section 32B-1-403.

209 (4) It is a third degree felony if a person's acquisition, use, display, or transfer of a false
210 or altered identification card:

211 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or

212 (b) aids or furthers the person's efforts to commit a violent felony.

213 Section 5. Section **53A-11-908** is amended to read:

214 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**
215 **violations -- Limitation of liability.**

216 (1) The Legislature recognizes that:

217 (a) participation in student government and extracurricular activities may confer

218 important educational and lifetime benefits upon students, and encourages school districts and
 219 charter schools to provide a variety of opportunities for all students to participate in such
 220 activities in meaningful ways;

221 (b) there is no constitutional right to participate in these types of activities, and does
 222 not through this section or any other provision of law create such a right;

223 (c) students who participate in student government and extracurricular activities,
 224 particularly competitive athletics, and the adult coaches, advisors, and assistants who direct
 225 those activities, become role models for others in the school and community;

226 (d) these individuals often play major roles in establishing standards of acceptable
 227 behavior in the school and community, and establishing and maintaining the reputation of the
 228 school and the level of community confidence and support afforded the school; and

229 (e) it is of the utmost importance that those involved in student government, whether as
 230 officers or advisors, and those involved in competitive athletics and related activities, whether
 231 students or staff, comply with all applicable laws and rules of behavior and conduct themselves
 232 at all times in a manner befitting their positions and responsibilities.

233 (2) (a) The State Board of Education may, and local boards of education and governing
 234 boards of charter schools shall, adopt rules implementing this section that apply to both
 235 students and staff.

236 (b) Those rules shall include prohibitions against the following types of conduct, while
 237 in the classroom, on school property, during school sponsored activities, or regardless of the
 238 location or circumstance, affecting a person or property described in Subsections
 239 53A-11-902(5)(a) through (d):

240 (i) use of foul, abusive, or profane language while engaged in school related activities;

241 (ii) illicit use, possession, or distribution of controlled substances or drug
 242 paraphernalia~~[-and the]~~;

243 (iii) the unlawful use, possession, or distribution of:

244 (A) an electronic cigarette as defined in Section 76-10-101[-];

245 (B) a non-medical nicotine product, as defined in Subsection 77-39-101(1);

246 (C) tobacco[-]; or

247 (D) alcoholic beverages [contrary to law]; and

248 ~~[(iii)]~~ (iv) hazing, demeaning, or assaultive behavior, whether consensual or not,

249 including behavior involving physical violence, restraint, improper touching, or inappropriate
250 exposure of body parts not normally exposed in public settings, forced ingestion of any
251 substance, or any act which would constitute a crime against a person or public order under
252 Utah law.

253 (3) (a) School employees who reasonably believe that a violation of this section may
254 have occurred shall immediately report that belief to the school principal, district
255 superintendent, or chief administrative officer of a charter school.

256 (b) Principals who receive a report under Subsection (3)(a) shall submit a report of the
257 alleged incident, and actions taken in response, to the district superintendent or the
258 superintendent's designee within 10 working days after receipt of the report.

259 (c) Failure of a person holding a professional certificate to report as required under this
260 Subsection (3) constitutes an unprofessional practice.

261 (4) Limitations of liability set forth under Section 53A-11-1004 apply to this section.

262 Section 6. Section **76-8-311.3** is amended to read:

263 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

264 **Penalties.**

265 (1) As used in this section:

266 (a) "Contraband" means any item not specifically prohibited for possession by
267 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

268 (b) "Controlled substance" means any substance defined as a controlled substance
269 under Title 58, Chapter 37, Utah Controlled Substances Act.

270 (c) "Correctional facility" means:

271 (i) any facility operated by or contracting with the Department of Corrections to house
272 offenders in either a secure or nonsecure setting;

273 (ii) any facility operated by a municipality or a county to house or detain criminal
274 offenders;

275 (iii) any juvenile detention facility; and

276 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
277 municipality, or county for use as a correctional facility.

278 (d) "Electronic cigarette" is as defined in Section 76-10-101.

279 (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,

280 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
281 Chapter 37, Utah Controlled Substances Act.

282 (f) "Mental health facility" is as defined in Section 62A-15-602.

283 (g) "Non-medical nicotine product" is as defined in Subsection 77-39-101(1).

284 [~~(g)~~] (h) "Offender" means a person in custody at a correctional facility.

285 [~~(h)~~] (i) "Secure area" is as defined in Section 76-8-311.1.

286 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may
287 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,
288 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
289 quantity may be:

290 (a) transported to or upon a correctional or mental health facility;

291 (b) sold or given away at any correctional or mental health facility;

292 (c) given to or used by any offender at a correctional or mental health facility; or

293 (d) knowingly or intentionally possessed at a correctional or mental health facility.

294 (3) It is a defense to any prosecution under this section if the accused in committing the
295 act made criminal by this section with respect to:

296 (a) a correctional facility operated by the Department of Corrections, acted in
297 conformity with departmental rule or policy;

298 (b) a correctional facility operated by a municipality, acted in conformity with the
299 policy of the municipality;

300 (c) a correctional facility operated by a county, acted in conformity with the policy of
301 the county; or

302 (d) a mental health facility, acted in conformity with the policy of the mental health
303 facility.

304 (4) (a) Any person who transports to or upon a correctional facility, or into a secure
305 area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of
306 escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

307 (b) Any person who provides or sells to any offender at a correctional facility, or any
308 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous
309 weapon, or implement of escape is guilty of a second degree felony.

310 (c) Any offender who possesses at a correctional facility, or any detainee who

311 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous
312 weapon, or implement of escape is guilty of a second degree felony.

313 (d) Any person who, without the permission of the authority operating the correctional
314 facility or the secure area of a mental health facility, knowingly possesses at a correctional
315 facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon,
316 or implement of escape is guilty of a third degree felony.

317 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,
318 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

319 (5) (a) A person is guilty of a third degree felony who, without the permission of the
320 authority operating the correctional facility or secure area of a mental health facility, knowingly
321 transports to or upon a correctional facility or into a secure area of a mental health facility any:

322 (i) spirituous or fermented liquor;

323 (ii) medicine, whether or not lawfully prescribed for the offender; or

324 (iii) poison in any quantity.

325 (b) A person is guilty of a third degree felony who knowingly violates correctional or
326 mental health facility policy or rule by providing or selling to any offender at a correctional
327 facility or detainee within a secure area of a mental health facility any:

328 (i) spirituous or fermented liquor;

329 (ii) medicine, whether or not lawfully prescribed for the offender; or

330 (iii) poison in any quantity.

331 (c) An inmate is guilty of a third degree felony who, in violation of correctional or
332 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a
333 mental health facility any:

334 (i) spirituous or fermented liquor;

335 (ii) medicine, other than medicine provided by the facility's health care providers in
336 compliance with facility policy; or

337 (iii) poison in any quantity.

338 (d) A person is guilty of a class A misdemeanor who, with the intent to directly or
339 indirectly provide or sell any tobacco product, non-medical nicotine product, or electronic
340 cigarette to an offender, directly or indirectly:

341 (i) transports, delivers, or distributes any tobacco product, non-medical nicotine

342 product, or electronic cigarette to an offender or on the grounds of any correctional facility;

343 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
344 person to transport any tobacco product, non-medical nicotine product, or electronic cigarette
345 to an offender or on any correctional facility, if the person is acting with the mental state
346 required for the commission of an offense; or

347 (iii) facilitates, arranges, or causes the transport of any tobacco product, non-medical
348 nicotine product, or electronic cigarette in violation of this section to an offender or on the
349 grounds of any correctional facility.

350 (e) A person is guilty of a class A misdemeanor who, without the permission of the
351 authority operating the correctional or mental health facility, fails to declare or knowingly
352 possesses at a correctional facility or in a secure area of a mental health facility any:

353 (i) spirituous or fermented liquor;

354 (ii) medicine; or

355 (iii) poison in any quantity.

356 (f) A person is guilty of a class B misdemeanor who, without the permission of the
357 authority operating the correctional facility, knowingly engages in any activity that would
358 facilitate the possession of any contraband by an offender in a correctional facility. The
359 provisions of Subsection (5)(d) regarding any tobacco product, non-medical nicotine product,
360 or electronic cigarette take precedence over this Subsection (5)(f).

361 (g) Exemptions may be granted for worship for Native American inmates pursuant to
362 Section 64-13-40.

363 (6) The possession, distribution, or use of a controlled substance at a correctional
364 facility or in a secure area of a mental health facility shall be prosecuted in accordance with
365 Title 58, Chapter 37, Utah Controlled Substances Act.

366 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
367 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing
368 any tobacco product, non-medical nicotine product, or electronic cigarette to offenders is a
369 class A misdemeanor.

370 Section 7. Section **76-10-3001** is enacted to read:

371 **Part 30. Flavored Tobacco and Nicotine Product Restrictions Act**

372 **76-10-3001. Title.**

373 This part is known as the "Flavored Tobacco and Nicotine Product Restriction Act."

374 Section 8. Section **76-10-3002** is enacted to read:

375 **76-10-3002. Definitions.**

376 As used in this part:

377 (1) "Characterizing flavor" means a distinguishable taste or aroma, other than the taste
378 or aroma of tobacco.

379 (2) "Cigar" is as defined in Section 76-10-101.

380 (3) "Cigarette" is as defined in Section 76-10-101.

381 (4) "Electronic cigarette" is as defined in Section 76-10-101.

382 (5) "Flavored tobacco product" means any product, other than a cigar or cigarette that:

383 (a) contains tobacco; and

384 (b) has a characterizing flavor.

385 (6) "Nicotine product" means any product that contains nicotine and does not contain
386 tobacco.

387 (7) "Permitted nicotine product" means a nicotine product that is:

388 (a) produced to be, and intended to be, used only to produce vapor in an electronic
389 cigarette; or

390 (b) (i) approved by the United States Food and Drug Administration for nicotine
391 replacement therapy or other medical purposes; and

392 (ii) provided for the purpose for which it is approved.

393 (8) "Place of business" is as defined in Section 76-10-101.

394 (9) (a) "Provides" means selling, offering for sale, giving, furnishing, sending, or
395 causing to be sent.

396 (b) "Provides" does not include:

397 (i) the acts of the United States Postal Service or other common carrier when engaged
398 in the business of transporting and delivering packages for others; or

399 (ii) the acts of a person, whether compensated or not, who transports or delivers a
400 package for another person without any reason to know of the package's content.

401 Section 9. Section **76-10-3003** is enacted to read:

402 **76-10-3003. Provision of flavored tobacco product or nicotine product prohibited.**

403 A person who provides a flavored tobacco product or a nicotine product, other than a

404 permitted nicotine product, to another is guilty of:

405 (1) a class C misdemeanor on the first offense; and

406 (2) a class B misdemeanor on each offense after the first offense.

407 Section 10. Section **76-10-3004** is enacted to read:

408 **76-10-3004. Provision of nicotine product to minor prohibited.**

409 (1) Except as provided in Subsection (2), a person who provides a nicotine product to a
410 person who is under the age of 19 is guilty of:

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

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

413 (c) a class A misdemeanor on each offense after the second offense.

414 (2) A person is not guilty of an offense for provision of a nicotine product under
415 Subsection (1) if the nicotine product is:

416 (a) approved by the United States Food and Drug Administration for nicotine
417 replacement therapy or other medical purposes;

418 (b) provided by prescription; and

419 (c) provided for the purpose for which it is approved.

420 Section 11. Section **76-10-3005** is enacted to read:

421 **76-10-3005. Buying or possessing a nicotine product by a minor -- Penalty --**
422 **Compliance officer authority -- Juvenile court jurisdiction.**

423 (1) Except as provided in Subsection (3), an 18 year-old person who buys or attempts
424 to buy, accepts, or has in the person's possession a nicotine product is guilty of a class C
425 misdemeanor and subject to a minimum fine or penalty of \$60.

426 (2) Except as provided in Subsection (3), a person under the age of 18 who buys or
427 attempts to buy, accepts, or has in the person's possession a nicotine product is subject to the
428 jurisdiction of the juvenile court and a minimum fine or penalty of \$60.

429 (3) A person is not guilty of an offense under Subsection (1) or (2) if the nicotine
430 product is:

431 (a) approved by the United States Food and Drug Administration for nicotine
432 replacement therapy or other medical purposes;

433 (b) obtained by a prescription; and

434 (c) obtained for the purpose for which it is approved.

435 (4) A compliance officer appointed by a board of education under Section 53A-3-402
436 may issue a citation for a violation of this section committed on school property. The
437 compliance officer shall report the cited violation to the appropriate juvenile court.

438 Section 12. Section **76-10-3006** is enacted to read:

439 **76-10-3006. Requirement of direct face-to-face sale of a permitted nicotine**
440 **product.**

441 (1) As used in this section:

442 (a) "Retailer" means a person who sells a permitted nicotine product to an individual
443 for personal consumption or who operates a facility where a vending machine or a self-service
444 display is permitted under Subsection (3)(b).

445 (b) "Self-service display" means a display of a permitted nicotine product to which the
446 public has access without the intervention of a retail employee.

447 (2) Except as provided in Subsection (3), a retailer may sell a permitted nicotine
448 product only in a face-to-face exchange between:

449 (a) an employee of the retailer; and

450 (b) the purchaser.

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

452 (a) mail-order sales of a permitted nicotine product, if the sale is to a manufacturer,
453 retailer, or wholesaler of a permitted nicotine product;

454 (b) sales from vending machines and self-service displays that are located in a separate
455 and defined area within a facility where the retailer ensures that no person younger than 19
456 years of age is present or permitted to enter at any time, unless accompanied by a parent or
457 legal guardian; and

458 (c) sales by a retailer from a retail store:

459 (i) that derives at least 80% of its revenues from:

460 (A) tobacco;

461 (B) tobacco related products; or

462 (C) permitted nicotine products; and

463 (ii) where the retailer ensures that no person younger than 19 years of age is present, or
464 permitted to enter, at any time, unless accompanied by a parent or legal guardian.

465 (4) (a) A parent or legal guardian who accompanies a person younger than 19 years of

466 age into an area described in Subsection (3)(b) or into a retail store described in Subsection
467 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
468 nicotine product is, except as provided in Subsection 76-10-3004(2), guilty of a violation of
469 Section 76-10-3004 and subject to the penalties provided for in that section.

470 (b) Nothing in this section may be construed as permitting a person to provide a
471 nicotine product or a permitted nicotine product to a minor in violation of Section 76-10-3004.

472 (5) A violation of Subsection (2) or (3) is:

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

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

475 (c) a class C misdemeanor on each offense after the second offense.

476 Section 13. Section **76-10-3007** is enacted to read:

477 **76-10-3007. Prohibition of gift or free distribution of a nicotine product --**

478 **Exceptions.**

479 (1) The Legislature finds that nicotine products can be addictive and may lead to
480 unhealthy behavior such as the use of tobacco products.

481 (2) Except as provided in Subsection (4), it is unlawful for a manufacturer, wholesaler,
482 or retailer to provide or distribute without charge any permitted nicotine product.

483 (3) A person who violates Subsection (2) is guilty of:

484 (a) a class C misdemeanor for the first offense; and

485 (b) a class B misdemeanor for each offense after the first offense.

486 (4) (a) A person is not guilty of a violation of Subsection (2) if the person to whom the
487 permitted nicotine product is provided or distributed is:

488 (i) over eighteen years of age; and

489 (ii) an attendee at a professional convention where the general public is excluded.

490 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who
491 provides or distributes the permitted nicotine product to a person who is over the age of
492 eighteen, upon the person's purchase of:

493 (i) another permitted nicotine product; or

494 (ii) a tobacco product.

495 Section 14. Section **77-39-101 (Superseded 07/01/11)** is amended to read:

496 **77-39-101 (Superseded 07/01/11). Investigation of sales of alcohol and tobacco to**

497 **under age persons.**

498 (1) As used in this section[-,"electronic"]:

499 (a) "Electronic cigarette" is as defined in Section 76-10-101.

500 (b) (i) "Non-medical nicotine product" means any product, except as provided in
501 Subsection (1)(b)(ii), that contains nicotine and does not contain tobacco.

502 (ii) "Non-medical nicotine product" does not include a product that is:

503 (A) approved by the United States Food and Drug Administration for nicotine
504 replacement therapy or other medical purposes; and

505 (B) provided for the purpose for which it is approved.

506 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
507 Classifications, may investigate the possible violation of:

508 (i) Section 32A-12-203 by requesting an individual under the age of 21 years to enter
509 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

510 (ii) Section 76-10-104 or 76-10-3004 by requesting an individual under the age of 19
511 years to enter into and attempt to purchase or make a purchase from a retail establishment of:

512 (A) a cigar;

513 (B) a cigarette;

514 (C) tobacco in any form; [or]

515 (D) an electronic cigarette[-]; or

516 (E) a non-medical nicotine product.

517 (b) A peace officer who is present at the site of a proposed purchase shall direct,
518 supervise, and monitor the individual requested to make the purchase.

519 (c) Immediately following a purchase or attempted purchase or as soon as practical the
520 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
521 establishment that the attempted purchaser was under the legal age to purchase:

522 (i) alcohol; or

523 (ii) (A) a cigar;

524 (B) a cigarette;

525 (C) tobacco in any form; [or]

526 (D) an electronic cigarette[-]; or

527 (E) a non-medical nicotine product.

528 (d) If a citation or information is issued, it shall be issued within seven days of the
529 purchase.

530 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
531 a written consent of that individual's parent or guardian shall be obtained prior to that
532 individual participating in any attempted purchase.

533 (b) An individual requested by the peace officer to attempt a purchase may:

534 (i) be a trained volunteer; or

535 (ii) receive payment, but may not be paid based on the number of successful purchases
536 of alcohol, tobacco, ~~or~~ an electronic cigarette, or a non-medical nicotine product.

537 (4) The individual requested by the peace officer to attempt a purchase and anyone
538 accompanying the individual attempting a purchase may not during the attempted purchase
539 misrepresent the age of the individual by false or misleading identification documentation in
540 attempting the purchase.

541 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
542 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
543 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, ~~or~~ an
544 electronic cigarette, or a non-medical nicotine product if a peace officer directs, supervises, and
545 monitors the individual.

546 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
547 shall be conducted:

548 (i) on a random basis; and

549 (ii) within a 12-month period at any one retail establishment location not more often
550 than:

551 (A) four times for the attempted purchase of:

552 (I) a cigar;

553 (II) a cigarette;

554 (III) tobacco in any form; ~~or~~

555 (IV) an electronic cigarette; ~~and~~ or

556 (V) a non-medical nicotine product; and

557 (B) four times for the attempted purchase of alcohol.

558 (b) Nothing in this section shall prohibit an investigation under this section if:

559 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
 560 cigar, a cigarette, tobacco in any form, [or] an electronic cigarette, or a non-medical nicotine
 561 product to an individual under the age established by Section 32A-12-203 [or], 76-10-104, or
 562 76-10-3004; and

563 (ii) the supervising peace officer makes a written record of the grounds for the
 564 reasonable suspicion.

565 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
 566 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
 567 was made.

568 (b) The report required by this Subsection (7) shall include:

569 (i) the name of the supervising peace officer;

570 (ii) the name of the individual attempting the purchase;

571 (iii) a photograph of the individual attempting the purchase showing how that
 572 individual appeared at the time of the attempted purchase;

573 (iv) the name and description of the cashier or proprietor from whom the individual
 574 attempted the purchase;

575 (v) the name and address of the retail establishment; and

576 (vi) the date and time of the attempted purchase.

577 Section 15. Section **77-39-101 (Effective 07/01/11)** is amended to read:

578 **77-39-101 (Effective 07/01/11). Investigation of sales of alcohol and tobacco to**
 579 **under age persons.**

580 (1) As used in this section[,"electronic"]:

581 (a) "Electronic cigarette" is as defined in Section 76-10-101.

582 (b) (i) "Non-medical nicotine product" means any product, except as provided in
 583 Subsection (1)(b)(ii), that contains nicotine and does not contain tobacco.

584 (ii) "Non-medical nicotine product" does not include a product that is:

585 (A) approved by the United States Food and Drug Administration for nicotine
 586 replacement therapy or other medical purposes; and

587 (B) provided for the purpose for which it is approved.

588 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
 589 Classifications, may investigate the possible violation of:

590 (i) Section 32B-4-403 by requesting an individual under the age of 21 years to enter
591 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

592 (ii) Section 76-10-104 or 76-10-3004 by requesting an individual under the age of 19
593 years to enter into and attempt to purchase or make a purchase from a retail establishment of:

594 (A) a cigar;

595 (B) a cigarette;

596 (C) tobacco in any form; [~~or~~]

597 (D) an electronic cigarette[-]; or

598 (E) a non-medical nicotine product.

599 (b) A peace officer who is present at the site of a proposed purchase shall direct,
600 supervise, and monitor the individual requested to make the purchase.

601 (c) Immediately following a purchase or attempted purchase or as soon as practical the
602 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
603 establishment that the attempted purchaser was under the legal age to purchase:

604 (i) alcohol; or

605 (ii) (A) a cigar;

606 (B) a cigarette;

607 (C) tobacco in any form; [~~or~~]

608 (D) an electronic cigarette[-]; or

609 (E) a non-medical nicotine product.

610 (d) If a citation or information is issued, it shall be issued within seven days of the
611 purchase.

612 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
613 a written consent of that individual's parent or guardian shall be obtained prior to that
614 individual participating in any attempted purchase.

615 (b) An individual requested by the peace officer to attempt a purchase may:

616 (i) be a trained volunteer; or

617 (ii) receive payment, but may not be paid based on the number of successful purchases
618 of alcohol, tobacco, [~~or~~] an electronic cigarette, or a non-medical nicotine product.

619 (4) The individual requested by the peace officer to attempt a purchase and anyone
620 accompanying the individual attempting a purchase may not during the attempted purchase

621 misrepresent the age of the individual by false or misleading identification documentation in
622 attempting the purchase.

623 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
624 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
625 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, [or] an
626 electronic cigarette, or a non-medical nicotine product if a peace officer directs, supervises, and
627 monitors the individual.

628 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
629 shall be conducted:

630 (i) on a random basis; and

631 (ii) within a 12-month period at any one retail establishment location not more often
632 than:

633 (A) four times for the attempted purchase of:

634 (I) a cigar;

635 (II) a cigarette;

636 (III) tobacco in any form; [or]

637 (IV) an electronic cigarette; [and] or

638 (V) a non-medical nicotine product; and

639 (B) four times for the attempted purchase of alcohol.

640 (b) Nothing in this section shall prohibit an investigation under this section if:

641 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
642 cigar, a cigarette, tobacco in any form, [or] an electronic cigarette, or a non-medical nicotine
643 product to an individual under the age established by Section 32B-4-403 [or], 76-10-104, or
644 76-10-3004; and

645 (ii) the supervising peace officer makes a written record of the grounds for the
646 reasonable suspicion.

647 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
648 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
649 was made.

650 (b) The report required by this Subsection (7) shall include:

651 (i) the name of the supervising peace officer;

- 652 (ii) the name of the individual attempting the purchase;
- 653 (iii) a photograph of the individual attempting the purchase showing how that
- 654 individual appeared at the time of the attempted purchase;
- 655 (iv) the name and description of the cashier or proprietor from whom the individual
- 656 attempted the purchase;
- 657 (v) the name and address of the retail establishment; and
- 658 (vi) the date and time of the attempted purchase.

Legislative Review Note
as of 6-3-10 11:15 AM

Office of Legislative Research and General Counsel