

**Representative Paul Ray** proposes the following substitute bill:

1                   **NICOTINE PRODUCT AND FLAVORED SMOKELESS**

2                                   **TOBACCO RESTRICTIONS**

3                                           2010 GENERAL SESSION

4                                           STATE OF UTAH

5                                   **Chief Sponsor: Paul Ray**

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

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends provisions of the Uniform Driver License Act, provisions relating to  
11 the state system of public education, the Utah Criminal Code, and the Utah Code of  
12 Criminal Procedure to place restrictions on the provision, obtaining, and possession of a  
13 nicotine product, or a flavored tobacco product, and to enforce these restrictions.

14                   **Highlighted Provisions:**

15                   This bill:

- 16                   ▶ defines terms;
- 17                   ▶ makes it a class A misdemeanor to knowingly acquire, use, display, or transfer a  
18 false or altered driver license certificate or identification card to procure a nicotine  
19 product;
- 20                   ▶ provides that the State Board of Education may, and local boards of education and  
21 governing boards of charter schools shall, adopt rules that prohibit the illicit use,  
22 possession, or distribution of a nicotine product or a flavored tobacco product;
- 23                   ▶ subject to certain exceptions, prohibits, and provides penalties for, the provision,  
24 obtaining, or possession of a nicotine product or a flavored tobacco product;
- 25                   ▶ describes when sale of a nicotine product or a flavored tobacco product is required



- 26 to be face-to-face and provides criminal penalties for violation of those requirements;
- 27       ▶ addresses enforcement of, and investigation of violations of, the provisions of this
- 28 bill;
- 29       ▶ describes when free distribution of a nicotine product or a flavored tobacco product
- 30 is prohibited and provides criminal penalties for violation of those prohibitions;
- 31       ▶ addresses advertising requirements relating to a nicotine product or a flavored
- 32 tobacco product; and
- 33       ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35       None

36 **Other Special Clauses:**

37       None

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40       **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197
- 41       **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197
- 42       **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161
- 43       **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382
- 44       **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342

45 ENACTS:

- 46       **76-10-3001**, Utah Code Annotated 1953
- 47       **76-10-3002**, Utah Code Annotated 1953
- 48       **76-10-3003**, Utah Code Annotated 1953
- 49       **76-10-3004**, Utah Code Annotated 1953
- 50       **76-10-3005**, Utah Code Annotated 1953
- 51       **76-10-3006**, Utah Code Annotated 1953
- 52       **76-10-3007**, Utah Code Annotated 1953
- 53       **76-10-3008**, Utah Code Annotated 1953

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

56       Section 1. Section **53-3-229** is amended to read:

57 **53-3-229. 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; or73 (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) [~~knowingly~~] issue a driver license certificate with false or fraudulent information;79 (b) [~~knowingly~~] issue a driver license certificate to a person younger than 21 years of  
80 age if the driver license certificate is not distinguished as required for a person younger than 21  
81 years of age under Section 53-3-207; or82 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered driver license  
83 certificate to procure:84 (i) cigarettes[~~;~~];85 (ii) tobacco[~~;~~~~or tobacco products~~];86 (iii) a tobacco product; or87 (iv) a nicotine product, as defined in Section 76-10-3002.

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

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

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

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

96 Section 2. Section **53-3-810** is amended to read:

97 **53-3-810. Prohibited uses of identification card -- Penalties.**

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

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

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

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

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

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

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

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

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

115 (a) [~~knowingly~~] issue an identification card with false or fraudulent information;

116 (b) [~~knowingly~~] issue an identification card to any person younger than 21 years of age  
117 if the identification card is not distinguished as required for a person younger than 21 years of  
118 age under Section 53-3-806; or

119 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered identification card to  
120 procure;

121 (i) cigarettes[;];

122 (ii) tobacco[~~, or tobacco products.~~];

123 (iii) a tobacco product; or

124 (iv) a nicotine product, as defined in Section 76-10-3002.

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

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

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

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

133 Section 3. Section **53A-11-908** is amended to read:

134 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**  
135 **violations -- Limitation of liability.**

136 (1) The Legislature recognizes that:

137 (a) participation in student government and extracurricular activities may confer  
138 important educational and lifetime benefits upon students, and encourages school districts and  
139 charter schools to provide a variety of opportunities for all students to participate in such  
140 activities in meaningful ways;

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

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

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

149 (e) it is of the utmost importance that those involved in student government, whether as

150 officers or advisors, and those involved in competitive athletics and related activities, whether  
151 students or staff, comply with all applicable laws and rules of behavior and conduct themselves  
152 at all times in a manner befitting their positions and responsibilities.

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

156 (b) Those rules shall include prohibitions against the following types of conduct, while  
157 in the classroom, on school property, during school sponsored activities, or regardless of the  
158 location or circumstance, affecting a person or property described in Subsections  
159 53A-11-902(5)(a) through (d):

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

161 (ii) illicit use, possession, or distribution of controlled substances or drug  
162 paraphernalia, and the use, possession, or distribution of a nicotine product as defined in  
163 Section 76-10-3002, tobacco, or alcoholic beverages contrary to law; and

164 (iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including  
165 behavior involving physical violence, restraint, improper touching, or inappropriate exposure  
166 of body parts not normally exposed in public settings, forced ingestion of any substance, or any  
167 act which would constitute a crime against a person or public order under Utah law.

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

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

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

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

177 Section 4. Section **76-8-311.3** is amended to read:

178 **76-8-311.3. Items prohibited in correctional and mental health facilities --**  
179 **Penalties.**

180 (1) As used in this section:

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

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

185 (c) "Correctional facility" means:

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

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

190 (iii) any juvenile detention facility; and

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

193 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,  
194 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,  
195 Chapter 37, Utah Controlled Substances Act.

196 (e) "Mental health facility" [~~has the same meaning~~] is as defined in Section  
197 62A-15-602.

198 (f) "Nicotine product" is as defined in Section 76-10-3002.

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

200 [~~(g)~~] (h) "Secure area" [~~has the same meaning as provided~~] is as defined in Section  
201 76-8-311.1.

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

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

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

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

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

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

212 (a) [~~with respect to~~] a correctional facility operated by the Department of Corrections,  
213 acted in conformity with departmental rule or policy;

214 (b) [~~with respect to~~] a correctional facility operated by a municipality, acted in  
215 conformity with the policy of the municipality;

216 (c) [~~with respect to~~] a correctional facility operated by a county, acted in conformity  
217 with the policy of the county; or

218 (d) [~~with respect to~~] a mental health facility, acted in conformity with the policy of the  
219 mental health facility.

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

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

226 (c) Any offender who possesses at a correctional facility, or any detainee who  
227 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous  
228 weapon, or implement of escape is guilty of a second degree felony.

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

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

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

238 (i) spirituous or fermented liquor;

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

240 (iii) poison in any quantity.

241 (b) A person is guilty of a third degree felony who knowingly violates correctional or  
242 mental health facility policy or rule by providing or selling to any offender at a correctional



243 facility or detainee within a secure area of a mental health facility any:

244 (i) spirituous or fermented liquor;

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

246 (iii) poison in any quantity.

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

250 (i) spirituous or fermented liquor;

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

253 (iii) poison in any quantity.

254 (d) A person is guilty of a class A misdemeanor who, with the intent to directly or  
255 indirectly provide or sell any tobacco product or nicotine product to an offender, directly or  
256 indirectly:

257 (i) transports, delivers, or distributes any tobacco product or nicotine product to an  
258 offender or on the grounds of any correctional facility;

259 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another  
260 person to transport any tobacco product or nicotine product to an offender or on any  
261 correctional facility, if the person is acting with the mental state required for the commission of  
262 an offense; or

263 (iii) facilitates, arranges, or causes the transport of any tobacco product or nicotine  
264 product in violation of this section to an offender or on the grounds of any correctional facility.

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

268 (i) spirituous or fermented liquor;

269 (ii) medicine; or

270 (iii) poison in any quantity.

271 (f) A person is guilty of a class B misdemeanor who, without the permission of the  
272 authority operating the correctional facility, knowingly engages in any activity that would  
273 facilitate the possession of any contraband by an offender in a correctional facility. The

274 provisions of Subsection (5)(d) regarding any tobacco product or nicotine product take  
275 precedence over this Subsection (5)(f).

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

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

281 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative  
282 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing  
283 any tobacco product or nicotine product to offenders is a class A misdemeanor.

284 Section 5. Section **76-10-3001** is enacted to read:

285 **Part 30. Nicotine Product Restriction Act**

286 **76-10-3001. Title.**

287 This part is known as the "Nicotine Product Restriction Act."

288 Section 6. Section **76-10-3002** is enacted to read:

289 **76-10-3002. Definitions.**

290 As used in this part:

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

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

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

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

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

303 (4) "Flavored smokeless tobacco" means smokeless tobacco that contains:

304 (a) an artificial or natural flavor, other than tobacco flavor; or

- 305 (b) an herb or spice, other than tobacco, that is detectable by taste.
- 306 (5) "Nicotine product" means any product that:
- 307 (a) contains nicotine; and
- 308 (b) does not contain tobacco.
- 309 (6) "Pipe tobacco" means a product that consists of loose tobacco that contains or
- 310 delivers nicotine and is intended to be smoked by a consumer in a pipe.
- 311 (7) "Place of business" includes:
- 312 (a) a shop;
- 313 (b) a store;
- 314 (c) a factory;
- 315 (d) a public garage;
- 316 (e) an office;
- 317 (f) a theater;
- 318 (g) a recreation hall;
- 319 (h) a dance hall;
- 320 (i) a poolroom;
- 321 (j) a café;
- 322 (k) a cafeteria;
- 323 (l) a cabaret;
- 324 (m) a restaurant;
- 325 (n) a hotel;
- 326 (o) a lodging house;
- 327 (p) a streetcar;
- 328 (q) a bus;
- 329 (r) an interurban or railway passenger coach;
- 330 (s) a waiting room; and
- 331 (t) any other place of business.
- 332 (8) (a) "Provides" means selling, offering for sale, giving, furnishing, sending, or
- 333 causing to be sent.
- 334 (b) "Provides" does not include:
- 335 (i) the acts of the United States Postal Service or other common carrier when engaged

336 in the business of transporting and delivering packages for others; or

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

339 (9) "Smokeless tobacco" means a product, other than a cigar or cigarette, that:

340 (a) consists of cut, ground, powdered, or leaf tobacco;

341 (b) contains nicotine; and

342 (c) is intended to be placed in the oral cavity.

343 Section 7. Section **76-10-3003** is enacted to read:

344 **76-10-3003. Provision of nicotine product or flavored smokeless tobacco**  
345 **prohibited.**

346 (1) Except as provided in Subsection (2), a person who provides a nicotine product or  
347 flavored smokeless tobacco to another is guilty of a class C misdemeanor on the first offense  
348 and a class B misdemeanor on each subsequent offense.

349 (2) Subsection (1) does not apply if the nicotine product or flavored smokeless tobacco  
350 is:

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

353 (ii) provided for the purpose for which it is approved; or

354 (b) approved by the United States Food and Drug Administration for general consumer  
355 use other than a use described in Subsection (2)(a)(i).

356 Section 8. Section **76-10-3004** is enacted to read:

357 **76-10-3004. Provision of nicotine product or flavored smokeless tobacco to minor**  
358 **prohibited.**

359 (1) Except as provided in Subsection (2), a person who provides a nicotine product or  
360 flavored smokeless tobacco to a person who is under the age of 19 is guilty of a class C  
361 misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A  
362 misdemeanor on each subsequent offense.

363 (2) Subsection (1) does not apply if the nicotine product or flavored smokeless tobacco  
364 is:

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

367 (b) provided by a prescription.

368 Section 9. Section **76-10-3005** is enacted to read:

369 **76-10-3005. Buying or possessing a nicotine product or flavored smokeless**  
370 **tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court**  
371 **jurisdiction.**

372 (1) Except as provided in Subsection (4), any 18 year-old person who buys or attempts  
373 to buy, accepts, or has in the person's possession a nicotine product or flavored smokeless  
374 tobacco is guilty of a class C misdemeanor and subject to a minimum fine or penalty of \$60.

375 (2) Except as provided in Subsection (4), any person under the age of 18 who buys or  
376 attempts to buy, accepts, or has in the person's possession a nicotine product or flavored  
377 smokeless tobacco is subject to the jurisdiction of the juvenile court and a minimum fine or  
378 penalty of \$60.

379 (3) A compliance officer appointed by a board of education under Section 53A-3-402  
380 may issue a citation for a violation of this section committed on school property. A cited  
381 violation shall be reported to the appropriate juvenile court.

382 (4) This section does not apply to a nicotine product or flavored smokeless tobacco that  
383 is:

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

386 (b) provided to the person described in this section by prescription.

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

388 **76-10-3006. Requirement of direct, face-to-face sale of a nicotine product or**  
389 **flavored smokeless tobacco -- Penalties.**

390 (1) As used in this section:

391 (a) "Retailer" means a person who sells a nicotine product or flavored smokeless  
392 tobacco to an individual for personal consumption or who operates a facility where a vending  
393 machine or a self-service display is permitted under Subsection (3)(b).

394 (b) "Self-service display" means a display of a nicotine product or flavored smokeless  
395 tobacco to which the public has access without the intervention of a retail employee.

396 (2) (a) Except as provided in Subsection (3), a retailer who is permitted to sell a  
397 nicotine product or flavored smokeless tobacco under Subsection 76-10-3003(2)(b) may only

398 sell the nicotine product or flavored smokeless tobacco in a direct, face-to-face exchange  
399 between:

400 (i) an employee of the retailer; and

401 (ii) the purchaser.

402 (b) Examples of methods of sale that are not permitted under this Subsection (2)  
403 include a vending machine or a self-service display.

404 (c) Subsections (2)(a) and (b) do not prohibit the use or display of a locked cabinet  
405 containing a nicotine product or flavored smokeless tobacco if the locked cabinet is accessible  
406 only to the retailer or an employee of the retailer.

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

408 (a) mail-order sales of a nicotine product or flavored smokeless tobacco, if the sale is  
409 to a manufacturer, retailer, or wholesaler who is permitted to sell a nicotine product or flavored  
410 smokeless tobacco under Subsection 76-10-3003(2)(b);

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

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

416 (i) which derives at least 80% of its revenue from:

417 (A) tobacco;

418 (B) tobacco related products; or

419 (C) nicotine products or flavored smokeless tobacco that the retailer is permitted to sell  
420 under Subsection 76-10-3003(2)(b); and

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

423 (4) (a) A parent or legal guardian who accompanies a person younger than 19 years of  
424 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection  
425 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a  
426 nicotine product or flavored smokeless tobacco is, except as provided in Subsection  
427 76-10-3004(2), guilty of a violation of Section 76-10-3004 and subject to the penalties  
428 provided for in that section.

429 (b) Nothing in this section may be construed as permitting a person to provide a  
430 nicotine product or flavored smokeless tobacco to a minor in violation of Section 76-10-3004.

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

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

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

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

435 Section 11. Section **76-10-3007** is enacted to read:

436 **76-10-3007. Prohibition of gift or free distribution of a nicotine product or**

437 **flavored smokeless tobacco -- Exceptions.**

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

440 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,  
441 or retailer to provide or distribute without charge any nicotine product or flavored smokeless  
442 tobacco. Any person who violates this section is guilty of a class C misdemeanor for the first  
443 offense, and is guilty of a class B misdemeanor for any subsequent offense.

444 (3) (a) A person who is permitted to provide a nicotine product or flavored smokeless  
445 tobacco under Subsection 76-10-3003(2)(b) may provide the nicotine product or flavored  
446 smokeless tobacco to a person who is over the age of 18 without charge at professional  
447 conventions where the general public is excluded.

448 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who:

449 (i) is permitted to provide a nicotine product or flavored smokeless tobacco under  
450 Subsection 76-10-3003(2)(b); and

451 (ii) gives the nicotine product or flavored smokeless tobacco described in Subsection  
452 (3)(b)(i) to a person who is over the age of 18 upon the person's purchase of:

453 (A) another nicotine product or flavored smokeless tobacco that the person is permitted  
454 to provide under Subsection 76-10-3003(2)(b); or

455 (B) a tobacco product.

456 Section 12. Section **76-10-3008** is enacted to read:

457 **76-10-3008. Nicotine product -- Advertising restrictions -- Warnings in**  
458 **advertisements.**

459 (1) Except as provided in Subsections (2) or (3), it is a class B misdemeanor for any

460 person to display on any billboard, streetcar sign, streetcar, bus, placard, or on any other object  
461 or place of display, any advertisement of a nicotine product.

462 (2) A dealer in a nicotine product that is approved by the United States Food and Drug  
463 Administration for general consumer use may have a sign on the front of the dealer's place of  
464 business stating that the dealer deals in a nicotine product.

465 (3) This section does not prohibit the advertising of a nicotine product in any  
466 newspaper, magazine, or periodical printed or circulating in this state.

467 (4) Any advertisement for a nicotine product that is placed in a newspaper, magazine,  
468 or periodical published in this state must bear a warning which states: "This product contains  
469 nicotine. Nicotine is addictive." This warning must be in a conspicuous location and in  
470 conspicuous and legible type, in contrast with the typography, layout, and color of all other  
471 printed material in the advertisement.

472 (5) If federal law requires warnings in advertisements of a nicotine product, the  
473 specific language required to be placed in advertisements for that product by that legislation  
474 shall take precedence over Subsection (4).

475 Section 13. Section **77-39-101** is amended to read:

476 **77-39-101. Investigation of sales of alcohol, tobacco, or a nicotine product to an**  
477 **underage person.**

478 (1) As used in this section, "nicotine product" is as defined in Section 76-10-3002.

479 ~~[(1)]~~ (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer

480 Classifications, may investigate the possible violation of:

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

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

485 (A) a cigar;

486 (B) a cigarette; [or]

487 (C) tobacco in any form[-]; or

488 (D) a nicotine product.

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



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

- 494 (i) alcohol; or
- 495 (ii) (A) a cigar;
- 496 (B) a cigarette; [~~or~~]
- 497 (C) tobacco in any form[-]; or
- 498 (D) a nicotine product.

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

501 [~~(2)~~] (3) (a) If an individual under the age of 18 years old is requested to attempt a  
502 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that  
503 individual participating in any attempted purchase.

- 504 (b) An individual requested by the peace officer to attempt a purchase may:
  - 505 (i) be a trained volunteer; or
  - 506 (ii) receive payment, but may not be paid based on the number of successful purchases  
507 of alcohol [~~or~~], tobacco, or a nicotine product.

508 [~~(3)~~] (4) The individual requested by the peace officer to attempt a purchase and  
509 anyone accompanying the individual attempting a purchase may not during the attempted  
510 purchase misrepresent the age of the individual by false or misleading identification  
511 documentation in attempting the purchase.

512 [~~(4)~~] (5) An individual requested to attempt to purchase or make a purchase pursuant to  
513 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted  
514 purchase of, or possession of alcohol, a cigar, a cigarette, [~~or~~] tobacco in any form, or a  
515 nicotine product if a peace officer directs, supervises, and monitors the individual.

516 [~~(5)~~] (6) (a) Except as provided in Subsection [~~(5)~~] (6)(b), a purchase attempted under  
517 this section shall be conducted:

- 518 (i) on a random basis; and
- 519 (ii) within a 12-month period at any one retail establishment location not more often  
520 than:

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

- 522 (I) a cigar;
- 523 (II) a cigarette; [~~or~~]
- 524 (III) tobacco in any form; [~~and~~] or
- 525 (IV) a nicotine product; and
- 526 (B) four times for the attempted purchase of alcohol.
- 527 (b) Nothing in this section shall prohibit an investigation under this section if:
- 528 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
- 529 cigar, a cigarette, [~~or~~] tobacco in any form, or a nicotine product to an individual under the age
- 530 established by Section 32A-12-203 [~~or~~], 76-10-104, or 76-10-3004; and
- 531 (ii) the supervising peace officer makes a written record of the grounds for the
- 532 reasonable suspicion.
- 533 [~~(6)~~] (7) (a) The peace officer exercising direction, supervision, and monitoring of the
- 534 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
- 535 was made.
- 536 (b) The report required by this Subsection [~~(6)~~] (7) shall include:
- 537 (i) the name of the supervising peace officer;
- 538 (ii) the name of the individual attempting the purchase;
- 539 (iii) a photograph of the individual attempting the purchase showing how that
- 540 individual appeared at the time of the attempted purchase;
- 541 (iv) the name and description of the cashier or proprietor from whom the individual
- 542 attempted the purchase;
- 543 (v) the name and address of the retail establishment; and
- 544 (vi) the date and time of the attempted purchase.