

Representative Paul Ray proposes the following substitute bill:

TOBACCO AND NICOTINE PRODUCT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

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 certain flavored tobacco products 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, other than flavored:
 - chewing tobacco;



- 26 • cigars;
- 27 • cigarettes;
- 28 • cigarette tobacco; or
- 29 • pipe tobacco;
- 30 ▶ subject to certain exceptions, prohibits and provides penalties for the provision,
- 31 obtaining, or possession of a nicotine product;
- 32 ▶ addresses enforcement of, and investigation of violations of, the provisions of this
- 33 bill; and
- 34 ▶ makes technical changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **53-3-229 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114

42 **53-3-229 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 114

43 and 276

44 **53-3-810 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114

45 **53-3-810 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 114

46 and 276

47 **53A-11-908**, as last amended by Laws of Utah 2010, Chapter 114

48 **76-8-311.3**, as last amended by Laws of Utah 2010, Chapter 114

49 **77-39-101 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114

50 **77-39-101 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 114

51 and 276

52 ENACTS:

53 **76-10-3001**, Utah Code Annotated 1953

54 **76-10-3002**, Utah Code Annotated 1953

55 **76-10-3003**, Utah Code Annotated 1953

56 **76-10-3004**, Utah Code Annotated 1953

57 **76-10-3005**, Utah Code Annotated 1953
58 **76-10-3006**, Utah Code Annotated 1953
59 **76-10-3007**, Utah Code Annotated 1953



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

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 Section **53-3-229 (Superseded 07/01/11)** is amended to read:

63 **53-3-229 (Superseded 07/01/11). Prohibited uses of license certificate -- Penalty.**

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (i) a cigarette;

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

92 (iii) tobacco; ~~[or]~~

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

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

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

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

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

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

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

104 **53-3-229 (Effective 07/01/11). Prohibited uses of license certificate -- Penalty.**

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

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

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

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

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

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

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

119 license certificate issued by that governmental entity; or

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

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

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

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

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

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

131 (i) a cigarette;

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

133 (iii) tobacco; [or]

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

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

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

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

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

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

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

145 **53-3-810 (Superseded 07/01/11). Prohibited uses of identification card --**

146 **Penalties.**

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

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

- 150 (b) display or to represent as the person's own an identification card not issued to the
151 person;
- 152 (c) refuse to surrender to the division or a peace officer upon demand any identification
153 card issued by the division;
- 154 (d) use a false name or give a false address in any application for an identification card
155 or any renewal or duplicate of the identification card, or to knowingly make a false statement,
156 or to knowingly conceal a material fact in the application;
- 157 (e) display a revoked identification card as a valid identification card;
- 158 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
159 identification card issued by a governmental entity if the item is not an authentic identification
160 card issued by that governmental entity; or
- 161 (g) alter any information contained on an authentic identification card so that it no
162 longer represents the information originally displayed.
- 163 (2) It is a class A misdemeanor to knowingly:
- 164 (a) issue an identification card with false or fraudulent information;
- 165 (b) issue an identification card to any person younger than 21 years of age if the
166 identification card is not distinguished as required for a person younger than 21 years of age
167 under Section 53-3-806; or
- 168 (c) acquire, use, display, or transfer a false or altered identification card to procure:
- 169 (i) a cigarette;
- 170 (ii) an electronic cigarette, as defined in Section 76-10-101;
- 171 (iii) tobacco; [~~or~~]
- 172 (iv) a tobacco product[-]; or
- 173 (v) a nicotine product, as defined in Section 76-10-3002.
- 174 (3) A person may not knowingly use, display, or transfer a false or altered
175 identification card to procure alcoholic beverages, gain admittance to a place where alcoholic
176 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
177 violation of Section 32A-1-301.
- 178 (4) It is a third degree felony if a person's acquisition, use, display, or transfer of a false
179 or altered identification card:
- 180 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or

181 (b) aids or furthers the person's efforts to commit a violent felony.
182 Section 4. Section **53-3-810 (Effective 07/01/11)** is amended to read:
183 **53-3-810 (Effective 07/01/11). Prohibited uses of identification card -- Penalties.**
184 (1) It is a class C misdemeanor to:
185 (a) lend or knowingly permit the use of an identification card issued to the person, by a
186 person not entitled to it;
187 (b) display or to represent as the person's own an identification card not issued to the
188 person;
189 (c) refuse to surrender to the division or a peace officer upon demand any identification
190 card issued by the division;
191 (d) use a false name or give a false address in any application for an identification card
192 or any renewal or duplicate of the identification card, or to knowingly make a false statement,
193 or to knowingly conceal a material fact in the application;
194 (e) display a revoked identification card as a valid identification card;
195 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
196 identification card issued by a governmental entity if the item is not an authentic identification
197 card issued by that governmental entity; or
198 (g) alter any information contained on an authentic identification card so that it no
199 longer represents the information originally displayed.
200 (2) It is a class A misdemeanor to knowingly:
201 (a) issue an identification card with false or fraudulent information;
202 (b) issue an identification card to any person younger than 21 years of age if the
203 identification card is not distinguished as required for a person younger than 21 years of age
204 under Section 53-3-806; or
205 (c) acquire, use, display, or transfer a false or altered identification card to procure:
206 (i) a cigarette;
207 (ii) an electronic cigarette, as defined in Section 76-10-101;
208 (iii) tobacco; ~~[or]~~
209 (iv) a tobacco product~~[-]; or~~
210 (v) a nicotine product, as defined in Section 76-10-3002.
211 (3) A person may not knowingly use, display, or transfer a false or altered

212 identification card to procure alcoholic beverages, gain admittance to a place where alcoholic
213 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
214 violation of Section 32B-1-403.

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

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

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

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

220 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**
221 **violations -- Limitation of liability.**

222 (1) The Legislature recognizes that:

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

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

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

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

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

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

242 (b) Those rules shall include prohibitions against the following types of conduct, while

243 in the classroom, on school property, during school sponsored activities, or regardless of the
 244 location or circumstance, affecting a person or property described in Subsections
 245 53A-11-902(5)(a) through (d):

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

247 (ii) illicit use, possession, or distribution of controlled substances or drug

248 paraphernalia~~[-and the]~~;

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

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

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

252 (C) tobacco[;]; or

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

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

255 including behavior involving physical violence, restraint, improper touching, or inappropriate

256 exposure of body parts not normally exposed in public settings, forced ingestion of any

257 substance, or any act which would constitute a crime against a person or public order under

258 Utah law.

259 (3) (a) School employees who reasonably believe that a violation of this section may

260 have occurred shall immediately report that belief to the school principal, district

261 superintendent, or chief administrative officer of a charter school.

262 (b) Principals who receive a report under Subsection (3)(a) shall submit a report of the

263 alleged incident, and actions taken in response, to the district superintendent or the

264 superintendent's designee within 10 working days after receipt of the report.

265 (c) Failure of a person holding a professional certificate to report as required under this

266 Subsection (3) constitutes an unprofessional practice.

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

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

269 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

270 **Penalties.**

271 (1) As used in this section:

272 (a) "Contraband" means any item not specifically prohibited for possession by

273 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

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

276 (c) "Correctional facility" means:

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

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

281 (iii) any juvenile detention facility; and

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

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

285 (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,
286 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
287 Chapter 37, Utah Controlled Substances Act.

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

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

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

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

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

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

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

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

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

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

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

304 (b) a correctional facility operated by a municipality, acted in conformity with the

305 policy of the municipality;

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

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

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

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

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

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

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

325 (5) (a) A person is guilty of a third degree felony who, without the permission of the
326 authority operating the correctional facility or secure area of a mental health facility, knowingly
327 transports to or upon a correctional facility or into 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 (b) A person is guilty of a third degree felony who knowingly violates correctional or
332 mental health facility policy or rule by providing or selling to any offender at a correctional
333 facility or detainee within a secure area of a mental health facility any:

334 (i) spirituous or fermented liquor;

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

336 (iii) poison in any quantity.

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

340 (i) spirituous or fermented liquor;

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

343 (iii) poison in any quantity.

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

347 (i) transports, delivers, or distributes any tobacco product, non-medical nicotine
348 product, or electronic cigarette to an offender or on the grounds of any correctional facility;

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

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

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

359 (i) spirituous or fermented liquor;

360 (ii) medicine; or

361 (iii) poison in any quantity.

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

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

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

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

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

377 **Part 30. Protection of Children and Adults from Nicotine Addiction Act**

378 **76-10-3001. Title.**

379 This part is known as the "Protection of Children and Adults from Nicotine Addiction
380 Act."

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

382 **76-10-3002. Definitions.**

383 As used in this part:

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

386 (2) "Chewing tobacco" means loose or compressed tobacco that is manufactured,
387 processed, and packaged to be used for placement in the mouth to allow absorption of nicotine
388 through the gums or the lining of the mouth.

389 (3) "Cigar" is as defined in Section 76-10-101.

390 (4) "Cigarette" is as defined in Section 76-10-101.

391 (5) "Cigarette tobacco" means loose or compressed tobacco that is manufactured,
392 processed, and packaged to be used in a cigarette.

393 (6) "Electronic cigarette" is as defined in Section 76-10-101.

394 (7) (a) "Flavored tobacco product" means any product, other than a product described
395 in Subsection (7)(b), that:

396 (i) contains tobacco; and

397 (ii) has a characterizing flavor.

398 (b) "Flavored tobacco product" does not include any of the following, regardless of
399 whether they have a characterizing flavor:

400 (i) chewing tobacco;

401 (ii) a cigar;

402 (iii) a cigarette;

403 (iv) cigarette tobacco; or

404 (v) pipe tobacco.

405 (8) "Nicotine product" means any product that contains nicotine and does not contain
406 tobacco.

407 (9) "Permitted nicotine product" means a nicotine product that:

408 (a) (i) is produced to be, and intended to be, used only to produce vapor in an
409 electronic cigarette; and

410 (ii) does not contain an added artificial or natural flavor, including an herb, a spice, a
411 fruit flavor, clove, cinnamon, vanilla, coconut, licorice, cocoa, chocolate, coffee, mint, honey,
412 or menthol; or

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

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

416 (10) "Pipe tobacco" means loose or compressed tobacco that is manufactured,
417 processed, and packaged to be smoked in a pipe.

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

419 (12) (a) "Provides" means selling, offering for sale, giving, furnishing, sending, or
420 causing to be sent.

421 (b) "Provides" does not include:

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

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

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

427 **76-10-3003. Provision of flavored tobacco product or nicotine product prohibited.**

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

429 permitted nicotine product, to another is guilty of:

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

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

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

433 **76-10-3004. Provision of nicotine product to minor prohibited.**

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

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

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

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

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

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

443 (b) (i) provided to a person who is 18 years old for the purpose for which it is
444 approved; or

445 (ii) provided by prescription.

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

447 **76-10-3005. Buying or possessing a nicotine product by a minor -- Penalty --**
448 **Compliance officer authority -- Juvenile court jurisdiction.**

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

452 (2) Except as provided in Subsection (4), a person under the age of 18 who buys or
453 attempts to buy, accepts, or has in the person's possession a nicotine product is subject to the
454 jurisdiction of the juvenile court and a minimum fine or penalty of \$60.

455 (3) A person is not guilty of an offense under Subsection (1) if the nicotine product is:

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

458 (b) obtained for the purpose for which it is approved.

459 (4) A person is not guilty of an offense under Subsection (2) if the nicotine product is:

460 (a) approved by the United States Food and Drug Administration for nicotine
461 replacement therapy; and

462 (b) obtained by prescription.

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

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

467 **76-10-3006. Requirement of direct face-to-face sale of a permitted nicotine**
468 **product.**

469 (1) As used in this section:

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

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

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

477 (a) an employee of the retailer; and

478 (b) the purchaser.

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

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

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

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

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

488 (A) tobacco;

489 (B) tobacco related products; or

490 (C) permitted nicotine products; and

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

493 (d) mail-order or Internet sales of a nicotine product to a person who is 18 years of age
494 or older if the nicotine product is:

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

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

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

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

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

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

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

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

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

510 **76-10-3007. Prohibition of gift or free distribution of a nicotine product --**

511 **Exceptions.**

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

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

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

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

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

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

521 (i) over 18 years of age; and

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

523 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who
524 provides or distributes the permitted nicotine product to a person who is over the age of 18,
525 upon the person's purchase of:

526 (i) another permitted nicotine product; or

527 (ii) a tobacco product.

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

529 **77-39-101 (Superseded 07/01/11). Investigation of sales of alcohol and tobacco to**
530 **under age persons.**

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

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

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

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

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

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

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

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

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

545 (A) a cigar;

546 (B) a cigarette;

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

548 (D) an electronic cigarette[~~;~~]; or

549 (E) a non-medical nicotine product.

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

552 (c) Immediately following a purchase or attempted purchase or as soon as practical the

553 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
554 establishment that the attempted purchaser was under the legal age to purchase:

- 555 (i) alcohol; or
556 (ii) (A) a cigar;
557 (B) a cigarette;
558 (C) tobacco in any form; [~~or~~]
559 (D) an electronic cigarette[~~;~~]; or
560 (E) a non-medical nicotine product.

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

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

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

- 567 (i) be a trained volunteer; or
568 (ii) receive payment, but may not be paid based on the number of successful purchases
569 of alcohol, tobacco, [~~or~~] an electronic cigarette, or a non-medical nicotine product.

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

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

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

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

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

585 (I) a cigar;

586 (II) a cigarette;

587 (III) tobacco in any form; [~~or~~]

588 (IV) an electronic cigarette; [~~and~~] or

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

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

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

592 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
593 cigar, a cigarette, tobacco in any form, [~~or~~] an electronic cigarette, or a non-medical nicotine
594 product to an individual under the age established by Section 32A-12-203 [~~or~~], 76-10-104, or
595 76-10-3004; and

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

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

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

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

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

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

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

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

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

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

611 **77-39-101 (Effective 07/01/11). Investigation of sales of alcohol and tobacco to**
612 **under age persons.**

613 (1) As used in this section[~~,"electronic~~];

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

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

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

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

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

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

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

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

627 (A) a cigar;

628 (B) a cigarette;

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

630 (D) an electronic cigarette[~~;~~]; or

631 (E) a non-medical nicotine product.

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

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

637 (i) alcohol; or

638 (ii) (A) a cigar;

639 (B) a cigarette;

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

641 (D) an electronic cigarette[~~;~~]; or

642 (E) a non-medical nicotine product.

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

645 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,

646 a written consent of that individual's parent or guardian shall be obtained prior to that
647 individual participating in any attempted purchase.

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

649 (i) be a trained volunteer; or

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

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

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

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

663 (i) on a random basis; and

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

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

667 (I) a cigar;

668 (II) a cigarette;

669 (III) tobacco in any form; ~~[or]~~

670 (IV) an electronic cigarette; ~~[and]~~ or

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

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

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

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

677 76-10-3004; and

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

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

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

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

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

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

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

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

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

692 **Section 16. Effective date.**

693 This bill takes effect on May 10, 2011, except that the amendments to the following
694 sections take effect on July 1, 2011:

695 (1) Section 53-3-229 (Effective 07/01/11);

696 (2) Section 53-3-810 (Effective 07/01/11); and

697 (3) Section 77-39-101 (Effective 07/01/11).

FISCAL NOTE

H.B. 170 1st Sub. (Buff)

SHORT TITLE: Tobacco and Nicotine Product Amendments

SPONSOR: Ray, P.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Courts \$9,500 ongoing General Fund beginning FY 2012. The bill will also generate state revenues of \$4,700 ongoing for the General Fund and \$4,700 ongoing for the General Fund Restricted - Non-Judicial Assessment Account beginning FY 2012.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	\$0	\$4,700	\$4,700
Restricted Funds	\$0	\$4,700	\$4,700
Total Revenue	\$0	\$9,400	\$9,400
Expenditure:			
General Fund	\$0	\$9,500	\$9,500
Total Expenditure	\$0	\$9,500	\$9,500
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$100)	(\$100)
Net Impact, General/Education Funds	\$0	(\$4,800)	(\$4,800)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill may cost county governments \$10,000 annually beginning FY 2012 for an estimated five individuals incarcerated for 30 days each year.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill may cost an estimated 157 individuals \$60 each for a total annual increase in state revenues of \$9,400 beginning FY 2012.