1	UNDERAGE POSSESSION OF TOBACCO
2	AMENDMENTS
3	2002 GENERAL SESSION
4	STATE OF UTAH
5	Sponsor: Carl R. Saunders
6	This act modifies the Utah Criminal Code by increasing the minimum fine for underage
7	possession of tobacco and making participation in a tobacco education program mandatory.
8	This act affects sections of Utah Code Annotated 1953 as follows:
9	AMENDS:
10	76-10-105, as last amended by Chapters 41 and 240, Laws of Utah 1998
11	78-3a-502, as last amended by Chapters 94 and 240, Laws of Utah 1998
12	Be it enacted by the Legislature of the state of Utah:
13	Section 1. Section <b>76-10-105</b> is amended to read:
14	76-10-105. Buying or possessing cigars, cigarettes, or tobacco by minors Penalty
15	Compliance officer authority Juvenile court jurisdiction.
16	(1) Any 18 year old person who buys or attempts to buy, accepts, or has in his possession
17	any cigar, cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:
18	(a) a minimum fine or penalty of [ <del>\$50; or</del> ] <u>\$60; and</u>
19	(b) participation in a court-approved tobacco education program, which may include a
20	participation fee.
21	(2) $\left[\frac{1}{2}\right]$ Any person under the age of 18 who buys or attempts to buy, accepts, or has in
	his
22	possession any cigar, cigarette, or tobacco in any form is subject to the jurisdiction of the Juvenile
23	Court and:
24	<b>§</b> [+] (a) [+] [ <del>(i)</del> ] <b>ş</b> a minimum fine or penalty of [ <del>\$50; or</del> ] <u>\$60; and</u>
25	<b>§</b> [+] (b) [+] [ <u>(ii)</u> ] <b>ş</b> participation in a court-approved tobacco education program, which
25a	may include
26	a participation fee.
27	Ş [ <del>(b)_The Juvenile Court may also require:</del> ] ş

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28	<b>§</b> [ <del>(i) one of the offender's parents, or the offender's guardian, to participate with the offender</del>
29	in the court-approved tobacco education program; and
30	(ii) other reasonable actions that are in the interest of the minor and the community.
31	<u>(3) Participation in a court-approved tobacco education program may be waived only if</u>
32	<u>the court finds that participation, including participation via telephone, the Internet, or other</u>
33	electronic means, would cause undue hardship to the offender.]
34	[+] (3) [+] [(4)] <b>ş</b> A compliance officer appointed by a board of education under Section
34a	53A-3-402
35	may issue citations for violations of this section committed on school property. Cited violations
36	shall be reported to the appropriate juvenile court.
37	Section 2. Section <b>78-3a-502</b> is amended to read:
38	78-3a-502. Petition Preliminary inquiry Nonjudicial adjustments Formal
39	referral Citation Failure to appear.
40	(1) Proceedings in minor's cases are commenced by petition.
41	(2) (a) A peace officer or any public official of the state, any county, city, or town charged
42	with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with
43	the juvenile court within ten days of the minor's arrest. If the arrested minor is taken to a detention
44	facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding
45	weekends and holidays. There shall be no requirement to file a formal referral with the juvenile
46	court on an offense that would be a class B misdemeanor or less if committed by an adult.
47	(b) When the court is informed by a peace officer or other person that a minor is or appears
48	to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to
49	determine whether the interests of the public or of the minor require that further action be taken.
50	(c) Based on the preliminary inquiry, the court may authorize the filing of or request that
51	the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 file a
52	petition. In its discretion, the court may, through its probation department, enter into a written
53	consent agreement with the minor and the minor's parent, guardian, or custodian for the nonjudicial
54	adjustment of the case if the facts are admitted and establish prima facie jurisdiction. Efforts to
55	effect a nonjudicial adjustment may not extend for a period of more than two months without leave
56	of a judge of the court, who may extend the period for an additional two months. The probation
57	department may not in connection with any nonjudicial adjustment compel any person to appear
58	at any conference, produce any papers, or visit any place.

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	01-07-02 12:24 PM H.B. 55
59	(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of
60	the nonjudicial closure:
61	(i) payment of a financial penalty of not more than \$100 to the Juvenile Court;
62	(ii) payment of victim restitution;
63	(iii) satisfactory completion of compensatory service;
64	(iv) referral to an appropriate provider for counseling or treatment;
65	(v) attendance at substance abuse programs or counseling programs;
66	(vi) compliance with specified restrictions on activities and associations; and
67	(vii) other reasonable actions that are in the interest of the minor and the community.
68	(e) Proceedings involving offenses under Section 78-3a-506 are governed by that section
69	regarding suspension of driving privileges.
70	(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile Court
71	shall include a minimum fine or penalty of [ $\frac{50 \text{ or}}{2}$ ] $\frac{60 \text{ and}}{2}$ participation in a court-approved
72	tobacco education program, which may include a participation fee.
73	(3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or
74	older, the county attorney, district attorney, or attorney general may commence an action by filing
75	a criminal information and a motion requesting the juvenile court to waive its jurisdiction and
76	certify the minor to the district court.
77	(4) (a) In cases of violations of fish and game laws, boating laws, class B and class C
78	misdemeanors, other infractions or misdemeanors as designated by general order of the Board of
79	Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the
80	Juvenile Court, a petition is not required and the issuance of a citation as provided in Section
81	78-3a-503 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required
82	unless requested by the court.
83	(b) Any failure to comply with the time deadline on a formal referral may not be the basis
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of dismissing the formal referral. 84

- 3 -

## Legislative Review Note as of 11-14-01 1:54 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

## **Committee Note**

The Health and Human Services Interim Committee recommended this bill.