

UNDERAGE POSSESSION OF TOBACCO

AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Carl R. Saunders

This act modifies the Utah Criminal Code by increasing the minimum fine for underage possession of tobacco and making participation in a tobacco education program mandatory.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-105, as last amended by Chapters 41 and 240, Laws of Utah 1998

78-3a-502, as last amended by Chapters 94 and 240, Laws of Utah 1998

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

Section 1. Section **76-10-105** is amended to read:

76-10-105. Buying or possessing cigars, cigarettes, or tobacco by minors -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any 18 year old person who buys or attempts to buy, accepts, or has in his possession any cigar, cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:

(a) a minimum fine or penalty of [~~\$50; or~~] \$60; and

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

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

(a) a minimum fine or penalty of [~~\$50; or~~] \$60; and

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

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

Section 2. Section **78-3a-502** is amended to read:

78-3a-502. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) Proceedings in minor's cases are commenced by petition.

(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within ten days of the minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.

(b) When the court is informed by a peace officer or other person that a minor is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether the interests of the public or of the minor require that further action be taken.

(c) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 file a petition. In its discretion, the court may, through its probation department, enter into a written consent agreement with the minor and the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more than two months without leave of a judge of the court, who may extend the period for an additional two months. The probation department may not in connection with any nonjudicial adjustment compel any person to appear at any conference, produce any papers, or visit any place.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

- (i) payment of a financial penalty of not more than \$100 to the Juvenile Court;
- (ii) payment of victim restitution;
- (iii) satisfactory completion of compensatory service;
- (iv) referral to an appropriate provider for counseling or treatment;

- (v) attendance at substance abuse programs or counseling programs;
- (vi) compliance with specified restrictions on activities and associations; and
- (vii) other reasonable actions that are in the interest of the minor and the community.

(e) Proceedings involving offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile Court shall include a minimum fine or penalty of [~~\$50 or~~] \$60 and participation in a court-approved tobacco education program, which may include a participation fee.

(3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of fish and game laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court, a petition is not required and the issuance of a citation as provided in Section 78-3a-503 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.