

1 **TOBACCO AND NICOTINE PRODUCT AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

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

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 unlawful use,
22 possession, or distribution of a nicotine product;
- 23 ▶ prohibits and provides penalties for the sale of a cigar, cigarette, electronic cigarette,
24 nicotine product, or tobacco by a person under 19 years old to a person who is 19
25 years old or older;
- 26 ▶ prohibits and provides penalties for the provision, obtaining, or possession of a
27 flavored tobacco product;



- 28 ▶ subject to certain exceptions, prohibits and provides penalties for the provision,
- 29 obtaining, or possession of a nicotine product;
- 30 ▶ makes it a misdemeanor to provide an electronic cigarette to another if the
- 31 electronic cigarette does not have a switch;
- 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41 **53-3-229 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114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44 **53-3-810 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 114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 **76-10-105.2**, Utah Code Annotated 1953

54 **76-10-3001**, Utah Code Annotated 1953

55 **76-10-3002**, Utah Code Annotated 1953

56 **76-10-3003**, Utah Code Annotated 1953

57 **76-10-3004**, Utah Code Annotated 1953

58 **76-10-3005**, Utah Code Annotated 1953

- 59 76-10-3006, Utah Code Annotated 1953
- 60 76-10-3007, Utah Code Annotated 1953
- 61 76-10-3008, Utah Code Annotated 1953



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

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 Section **53-3-229 (Superseded 07/01/11)** is amended to read:

65 **53-3-229 (Superseded 07/01/11). Prohibited uses of license certificate -- Penalty.**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 92 (i) a cigarette;
- 93 (ii) an electronic cigarette, as defined in Section 76-10-101;
- 94 (iii) tobacco; ~~[or]~~
- 95 (iv) a tobacco product~~[-]; or~~
- 96 (v) a nicotine product, as defined in Section 76-10-3002.

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

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

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

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

106 **53-3-229 (Effective 07/01/11). Prohibited uses of license certificate -- Penalty.**

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

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

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

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

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

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

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

121 license certificate issued by that governmental entity; or

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

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

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

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

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

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

133 (i) a cigarette;

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

135 (iii) tobacco; [or]

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

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

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

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

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

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

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

147 **53-3-810 (Superseded 07/01/11). Prohibited uses of identification card --**

148 **Penalties.**

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

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

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

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

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

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

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

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

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

222 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**
223 **violations -- Limitation of liability.**

224 (1) The Legislature recognizes that:

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

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

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

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

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

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

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

245 in the classroom, on school property, during school sponsored activities, or regardless of the
 246 location or circumstance, affecting a person or property described in Subsections
 247 53A-11-902(5)(a) through (d):

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

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

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

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

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

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

254 (C) tobacco[-]; or

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

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

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

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

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

260 Utah law.

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

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

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

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

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

271 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

272 **Penalties.**

273 (1) As used in this section:

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

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

278 (c) "Correctional facility" means:

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

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

283 (iii) any juvenile detention facility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

307 policy of the municipality;

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

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

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

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

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

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

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

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

330 (i) spirituous or fermented liquor;

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

332 (iii) poison in any quantity.

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

336 (i) spirituous or fermented liquor;

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

338 (iii) poison in any quantity.

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

342 (i) spirituous or fermented liquor;

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

345 (iii) poison in any quantity.

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

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

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

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

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

361 (i) spirituous or fermented liquor;

362 (ii) medicine; or

363 (iii) poison in any quantity.

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

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

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

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

378 Section 7. Section **76-10-105.2** is enacted to read:

379 **76-10-105.2. Person under 19 years old prohibited from selling a cigar, cigarette,**
380 **electronic cigarette, nicotine product, or tobacco to a lawful possessor.**

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

382 (2) It is unlawful for a person who is 18 years old to sell, or participate in the sale, of a
383 cigar, cigarette, electronic cigarette, nicotine product, or tobacco in any form to a person who is
384 19 years old or older.

385 (3) A person who violates Subsection (2) is guilty of a class C misdemeanor and
386 subject to a minimum fine or penalty of \$60.

387 (4) It is unlawful for a person who is under 18 years old to sell, or participate in the
388 sale, of a cigar, cigarette, electronic cigarette, nicotine product, or tobacco in any form to a
389 person who is 19 years old or older.

390 (5) A person who violates Subsection (4) is subject to the jurisdiction of the juvenile
391 court and a minimum fine or penalty of \$60.

392 Section 8. Section **76-10-3001** is enacted to read:

393 **Part 30. Protection of Children and Adults from Nicotine Addiction Act**
394 **76-10-3001. Title.**

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

397 Section 9. Section **76-10-3002** is enacted to read:

398 **76-10-3002. Definitions.**

399 As used in this part:

400 (1) "Characterizing flavor" means a distinguishable taste or aroma, other than the taste
401 or aroma of tobacco or menthol.

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

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

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

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

406 (a) contains tobacco; and

407 (b) has a characterizing flavor.

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

410 (7) "Permitted nicotine product" means a nicotine product that:

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

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

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

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

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

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

422 (b) "Provides" does not include:

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

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

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

428 **76-10-3003. Provision of flavored tobacco product or nicotine product prohibited.**

429 A person who provides a flavored tobacco product or a nicotine product, other than a
430 permitted nicotine product, to another is guilty of:

431 (1) a class C misdemeanor on the first offense; and
432 (2) a class B misdemeanor on each offense after the first offense.
433 Section 11. Section **76-10-3004** is enacted to read:
434 **76-10-3004. Provision of nicotine product to minor prohibited.**
435 (1) Except as provided in Subsection (2), a person who provides a nicotine product to a
436 person who is under the age of 19 is guilty of:
437 (a) a class C misdemeanor on the first offense;
438 (b) a class B misdemeanor on the second offense; and
439 (c) a class A misdemeanor on each offense after the second offense.
440 (2) A person is not guilty of an offense for provision of a nicotine product under
441 Subsection (1) if the nicotine product is:
442 (a) approved by the United States Food and Drug Administration for nicotine
443 replacement therapy or other medical purposes;
444 (b) provided by prescription; and
445 (c) provided for the purpose for which it is approved.
446 Section 12. 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 (3), 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) or (2) if the nicotine
456 product is:
457 (a) approved by the United States Food and Drug Administration for nicotine
458 replacement therapy or other medical purposes;
459 (b) obtained by a prescription; and
460 (c) obtained for the purpose for which it is approved.
461 (4) A compliance officer appointed by a board of education under Section 53A-3-402

462 may issue a citation for a violation of this section committed on school property. The
463 compliance officer shall report the cited violation to the appropriate juvenile court.

464 Section 13. Section **76-10-3006** is enacted to read:

465 **76-10-3006. Requirement of direct face-to-face sale of a permitted nicotine**
466 **product.**

467 (1) As used in this section:

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

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

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

475 (a) an employee of the retailer; and

476 (b) the purchaser.

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

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

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

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

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

486 (A) tobacco;

487 (B) tobacco related products; or

488 (C) permitted nicotine products; and

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

491 (4) (a) A parent or legal guardian who accompanies a person younger than 19 years of
492 age into an area described in Subsection (3)(b) or into a retail store described in Subsection

493 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
494 nicotine product is, except as provided in Subsection 76-10-3004(2), guilty of a violation of
495 Section 76-10-3004 and subject to the penalties provided for in that section.

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

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

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

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

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

502 Section 14. Section **76-10-3007** is enacted to read:

503 **76-10-3007. Prohibition of gift or free distribution of a nicotine product --**

504 **Exceptions.**

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

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

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

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

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

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

514 (i) over 18 years of age; and

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

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

519 (i) another permitted nicotine product; or

520 (ii) a tobacco product.

521 Section 15. Section **76-10-3008** is enacted to read:

522 **76-10-3008. Provision of electronic cigarette without a switch prohibited.**

523 (1) As used in this section, "electronic cigarette without a switch" means an electronic

524 cigarette that does not have a switch that enables an individual to turn off the electronic
525 cigarette.

526 (2) A person who provides an electronic cigarette without a switch to a person who is
527 19 years of age or older is guilty of:

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

529 (b) a class B misdemeanor on each offense after the first offense.

530 Section 16. Section **77-39-101 (Superseded 07/01/11)** is amended to read:

531 **77-39-101 (Superseded 07/01/11). Investigation of sales of alcohol and tobacco to**
532 **under age persons.**

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

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

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

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

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

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

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

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

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

547 (A) a cigar;

548 (B) a cigarette;

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

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

551 (E) a non-medical nicotine product.

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

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

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

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

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

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

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

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

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

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

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

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

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

587 (I) a cigar;

588 (II) a cigarette;

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

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

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

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

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

594 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
595 cigar, a cigarette, tobacco in any form, [or] an electronic cigarette, or a non-medical nicotine
596 product to an individual under the age established by Section 32A-12-203 [or], 76-10-104, or
597 76-10-3004; and

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

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

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

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

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

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

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

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

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

612 Section 17. Section 77-39-101 (Effective 07/01/11) is amended to read:

613 **77-39-101 (Effective 07/01/11). Investigation of sales of alcohol and tobacco to**
614 **under age persons.**

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

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

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

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

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

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

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

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

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

629 (A) a cigar;

630 (B) a cigarette;

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

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

633 **(E) a non-medical nicotine product.**

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

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

639 (i) alcohol; or

640 (ii) (A) a cigar;

641 (B) a cigarette;

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

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

644 **(E) a non-medical nicotine product.**

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

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

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

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

651 (i) be a trained volunteer; or

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

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

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

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

665 (i) on a random basis; and

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

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

669 (I) a cigar;

670 (II) a cigarette;

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

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

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

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

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

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

679 76-10-3004; and

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

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

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

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

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

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

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

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

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

694 Section 18. **Effective date.**

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

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

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

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

Legislative Review Note

as of 1-26-11 6:14 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 170

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 \$19,500 annually beginning FY 2012 for an estimated ten 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.