

HB0170S01 compared with HB0170

~~{deleted text}~~ shows text that was in HB0170 but was deleted in HB0170S01.

inserted text shows text that was not in HB0170 but was inserted into HB0170S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

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 ~~{a}~~certain flavored tobacco ~~{product}~~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;

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- ▶ 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 sale of a cigar, cigarette, electronic cigarette, nicotine product, or tobacco by a person under 19 years old to a person who is 19 years old or older;~~
- + ▶ prohibits and provides penalties for the provision, obtaining, or possession of a flavored tobacco product ~~{;}~~ other than flavored:
 - chewing tobacco;
 - cigars;
 - cigarettes;
 - cigarette tobacco; or
 - pipe tobacco;
- ▶ subject to certain exceptions, prohibits and provides penalties for the provision, obtaining, or possession of a nicotine product;
- ~~{ → makes it a misdemeanor to provide an electronic cigarette to another if the electronic cigarette does not have a switch;~~
- + ▶ addresses enforcement of, and investigation of violations of, the provisions of this bill; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

53-3-229 (Superseded 07/01/11), as last amended by Laws of Utah 2010, Chapter 114

53-3-229 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapters 114 and 276

53-3-810 (Superseded 07/01/11), as last amended by Laws of Utah 2010, Chapter 114

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

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and 276

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

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

77-39-101 (Superseded 07/01/11), as last amended by Laws of Utah 2010, Chapter 114

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

and 276

ENACTS:

~~{ 76-10-105.2, Utah Code Annotated 1953~~

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

76-10-3002, Utah Code Annotated 1953

76-10-3003, Utah Code Annotated 1953

76-10-3004, Utah Code Annotated 1953

76-10-3005, Utah Code Annotated 1953

76-10-3006, Utah Code Annotated 1953

76-10-3007, Utah Code Annotated 1953

~~{ 76-10-3008, Utah Code Annotated 1953~~

}

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

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

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

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

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

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

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

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

(e) display a canceled, denied, revoked, suspended, or disqualified driver license

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certificate as a valid driver license certificate;

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

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

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

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

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

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

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

(i) a cigarette;

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

(iii) tobacco; ~~or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a cigarette;

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

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

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

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

(4) A person may not use, display, or transfer a false or altered driver license certificate

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

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

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

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

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

Penalties.

(1) It is a class C misdemeanor to:

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

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

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

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

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

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

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

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

(a) issue an identification card with false or fraudulent information;

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

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(c) acquire, use, display, or transfer a false or altered identification card to procure:

(i) a cigarette;

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

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

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

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

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

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

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

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

Section 4. Section **53-3-810 (Effective 07/01/11)** is amended to read:

53-3-810 (Effective 07/01/11). Prohibited uses of identification card -- Penalties.

(1) It is a class C misdemeanor to:

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

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

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

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

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

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

(g) alter any information contained on an authentic identification card so that it no

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longer represents the information originally displayed.

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

(a) issue an identification card with false or fraudulent information;

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

(c) acquire, use, display, or transfer a false or altered identification card to procure:

(i) a cigarette;

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

(iii) tobacco; ~~or~~

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

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

(3) A person may not knowingly use, display, or transfer a false or altered identification card to procure alcoholic beverages, gain admittance to a place where alcoholic beverages are sold or consumed, or obtain employment that may not be obtained by a minor in violation of Section 32B-1-403.

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

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

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

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

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

(1) The Legislature recognizes that:

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

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

(c) students who participate in student government and extracurricular activities,

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particularly competitive athletics, and the adult coaches, advisors, and assistants who direct those activities, become role models for others in the school and community;

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

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

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

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

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

(ii) illicit use, possession, or distribution of controlled substances or drug paraphernalia~~[-and the]~~;

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

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

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

(C) tobacco[;]; or

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

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

(3) (a) School employees who reasonably believe that a violation of this section may have occurred shall immediately report that belief to the school principal, district

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superintendent, or chief administrative officer of a charter school.

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

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

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

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

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

Penalties.

(1) As used in this section:

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

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

(c) "Correctional facility" means:

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

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

(iii) any juvenile detention facility; and

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

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

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

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

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

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

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

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

- (a) transported to or upon a correctional or mental health facility;
- (b) sold or given away at any correctional or mental health facility;
- (c) given to or used by any offender at a correctional or mental health facility; or
- (d) knowingly or intentionally possessed at a correctional or mental health facility.

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

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

(b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

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

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

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

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

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

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

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

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

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

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

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

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

- (i) spirituous or fermented liquor;
- (ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or
- (iii) poison in any quantity.

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

- (i) transports, delivers, or distributes any tobacco product, non-medical nicotine product, or electronic cigarette to an offender or on the grounds of any correctional facility;
- (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product, non-medical nicotine product, or electronic cigarette to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or
- (iii) facilitates, arranges, or causes the transport of any tobacco product, non-medical

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nicotine product, or electronic cigarette in violation of this section to an offender or on the grounds of any correctional facility.

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

- (i) spirituous or fermented liquor;
- (ii) medicine; or
- (iii) poison in any quantity.

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

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

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

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

Section 7. Section ~~{76-10-105.2}~~ 76-10-3001 is enacted to read:

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

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

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

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

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

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

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

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

~~76-10-3001. Title.~~

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

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

~~76-10-3002. Definitions.~~

~~As used in this part:~~

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

~~(2).~~

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

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

~~(3) (4) "Cigarette" is as defined in Section 76-10-101.~~

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

~~(4) (6) "Electronic cigarette" is as defined in Section 76-10-101.~~

~~(5) (7) (a) "Flavored tobacco product" means any product, other than a cigar or cigarette, product described in Subsection (7)(b), that:~~

~~(a) i) contains tobacco; and~~

~~(b) ii) has a characterizing flavor.~~

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

~~(i) chewing tobacco;~~

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(ii) a cigar;

(iii) a cigarette;

(iv) cigarette tobacco; or

(v) pipe tobacco.

(~~6~~8) "Nicotine product" means any product that contains nicotine and does not contain tobacco.

(~~7~~9) "Permitted nicotine product" means a nicotine product that:

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

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

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

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

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

(~~8~~11) "Place of business" is as defined in Section 76-10-101.

(~~9~~12) (a) "Provides" means selling, offering for sale, giving, furnishing, sending, or causing to be sent.

(b) "Provides" does not include:

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

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

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

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

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

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

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

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Section ~~{11}~~10. Section **76-10-3004** is enacted to read:

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

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

- (a) a class C misdemeanor on the first offense;
- (b) a class B misdemeanor on the second offense; and
- (c) a class A misdemeanor on each offense after the second offense.

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

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

(b) ~~(i)~~ provided ~~{by prescription; and~~

~~(c) provided; to a person who is 18 years old~~ for the purpose for which it is approved; or

~~(ii) provided by prescription.~~

Section ~~{12}~~11. Section **76-10-3005** is enacted to read:

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

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

(2) Except as provided in Subsection (~~{3}~~4), a person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession a nicotine product is subject to the jurisdiction of the juvenile court and a minimum fine or penalty of \$60.

(3) A person is not guilty of an offense under Subsection (1) ~~{or (2)}~~ if the nicotine product is:

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

~~(b) obtained by a prescription;}~~ and

~~(c)}~~b) obtained for the purpose for which it is approved.

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

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

(b) obtained by prescription.

(~~4~~5) A compliance officer appointed by a board of education under Section 53A-3-402 may issue a citation for a violation of this section committed on school property. The compliance officer shall report the cited violation to the appropriate juvenile court.

Section ~~13~~12. Section **76-10-3006** is enacted to read:

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

(1) As used in this section:

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

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

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

(a) an employee of the retailer; and

(b) the purchaser.

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

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

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

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

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

(A) tobacco;

(B) tobacco related products; or

(C) permitted nicotine products; and

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(ii) where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian~~§ 14~~; and

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

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

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

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

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

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

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

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

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

Section ~~§ 14~~ 13. Section **76-10-3007** is enacted to read:

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

Exceptions.

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

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

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

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

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

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

(i) over 18 years of age; and

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

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

(i) another permitted nicotine product; or

(ii) a tobacco product.

~~{ Section 15. Section 76-10-3008 is enacted to read:~~

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

~~(1) As used in this section, "electronic cigarette without a switch" means an electronic cigarette that does not have a switch that enables an individual to turn off the electronic cigarette.~~

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

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

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

~~†~~ Section ~~{16}~~14. Section 77-39-101 (Superseded 07/01/11) is amended to read:

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

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

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

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

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

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

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

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

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

(ii) Section 76-10-104 or 76-10-3004 by requesting an individual under the age of 19

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years to enter into and attempt to purchase or make a purchase from a retail establishment of:

- (A) a cigar;
- (B) a cigarette;
- (C) tobacco in any form; ~~[or]~~
- (D) an electronic cigarette~~[-];~~or
- (E) a non-medical nicotine product.

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

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

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

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

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

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

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

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

(5) An individual requested to attempt to purchase or make a purchase pursuant to this

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section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, ~~[or]~~ an electronic cigarette, or a non-medical nicotine product if a peace officer directs, supervises, and monitors the individual.

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

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

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

- (I) a cigar;

- (II) a cigarette;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~17~~15. Section 77-39-101 (Effective 07/01/11) is amended to read:

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

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

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

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

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

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

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

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

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

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

(A) a cigar;

(B) a cigarette;

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

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

(E) a non-medical nicotine product.

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

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

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

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

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

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

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

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

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

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

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

(A) four times for the attempted purchase of:

- (I) a cigar;

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(II) a cigarette;

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

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

(V) a non-medical nicotine product; and

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

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

(i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a cigar, a cigarette, tobacco in any form, ~~[or]~~ an electronic cigarette, or a non-medical nicotine product to an individual under the age established by Section 32B-4-403 ~~[or]~~, 76-10-104, or 76-10-3004; and

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

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

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

(i) the name of the supervising peace officer;

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

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

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

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

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

Section ~~†18†~~16. **Effective date.**

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

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

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

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

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~~Legislative Review Note~~

~~as of 1-26-11 6:14 AM~~

~~Office of Legislative Research and General Counsel}~~