

**Representative Paul Ray** proposes the following substitute bill:

**NICOTINE PRODUCT RESTRICTIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions of 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 place restrictions on the provision, obtaining, and possession of a nicotine product and to enforce these restrictions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ makes it a class A misdemeanor to knowingly acquire, use, display, or transfer a false or altered driver license certificate or identification card to procure a nicotine product;
- ▶ provides that the State Board of Education may, and local boards of education and governing boards of charter schools shall, adopt rules that prohibit the illicit use, possession, or distribution of a nicotine product;
- ▶ subject to certain exceptions, prohibits, and provides penalties for, the provision, obtaining, or possession of a nicotine product;
- ▶ describes when sale of a nicotine product is required to be face-to-face and provides criminal penalties for violation of those requirements;



26           ▶ addresses enforcement of, and investigation of violations of, the provisions of this  
27 bill;

28           ▶ describes when free distribution of a nicotine product is prohibited and provides  
29 criminal penalties for violation of those prohibitions; and

30           ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill coordinates with H.B. 88, Electronic Cigarette Restrictions, by providing  
35 technical amendments.

36 **Utah Code Sections Affected:**

37 AMENDS:

38           **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197

39           **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197

40           **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161

41           **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382

42           **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342

43 ENACTS:

44           **76-10-3001**, Utah Code Annotated 1953

45           **76-10-3002**, Utah Code Annotated 1953

46           **76-10-3003**, Utah Code Annotated 1953

47           **76-10-3004**, Utah Code Annotated 1953

48           **76-10-3005**, Utah Code Annotated 1953

49           **76-10-3006**, Utah Code Annotated 1953

50           **76-10-3007**, Utah Code Annotated 1953

51 **Utah Code Sections Affected by Coordination Clause:**

52           **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197

53           **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197

54           **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161

55           **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382

56           **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342

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

Section 1. Section **53-3-229** is amended to read:

**53-3-229. 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 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) [~~knowingly~~] issue a driver license certificate with false or fraudulent information;

(b) [~~knowingly~~] 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) [~~knowingly~~] acquire, use, display, or transfer a false or altered driver license certificate to procure:

(i) cigarettes[-];

88 (ii) tobacco[, or tobacco products.];

89 (iii) a tobacco product; or

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

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

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

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

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

99 Section 2. Section **53-3-810** is amended to read:

100 **53-3-810. Prohibited uses of identification card -- Penalties.**

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

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

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

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

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

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

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

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

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

118 (a) [~~knowingly~~] issue an identification card with false or fraudulent information;

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

122 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered identification card to  
123 procure;

124 (i) cigarettes[~~;~~];

125 (ii) tobacco[~~, or tobacco products.~~];

126 (iii) a tobacco product; or

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

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

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

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

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

136 Section 3. Section **53A-11-908** is amended to read:

137 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**  
138 **violations -- Limitation of liability.**

139 (1) The Legislature recognizes that:

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

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

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

149 (d) these individuals often play major roles in establishing standards of acceptable

150 behavior in the school and community, and establishing and maintaining the reputation of the  
151 school and the level of community confidence and support afforded the school; and

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

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

159 (b) Those rules shall include prohibitions against the following types of conduct, while  
160 in the classroom, on school property, during school sponsored activities, or regardless of the  
161 location or circumstance, affecting a person or property described in Subsections  
162 53A-11-902(5)(a) through (d):

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

164 (ii) illicit use, possession, or distribution of controlled substances or drug  
165 paraphernalia, and the use, possession, or distribution of a nicotine product as defined in  
166 Section 76-10-3002, tobacco, or alcoholic beverages contrary to law; and

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

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

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

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

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

180 Section 4. Section **76-8-311.3** is amended to read:

181 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

182 **Penalties.**

183 (1) As used in this section:

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

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

188 (c) "Correctional facility" means:

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

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

193 (iii) any juvenile detention facility; and

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

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

199 (e) "Mental health facility" [~~has the same meaning~~] is as defined in Section  
200 62A-15-602.

201 (f) "Nicotine product" is as defined in Section 76-10-3002.

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

203 [~~(g)~~] (h) "Secure area" [~~has the same meaning as provided~~] is as defined in Section  
204 76-8-311.1.

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

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

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

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

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

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

215 (a) [~~with respect to~~] a correctional facility operated by the Department of Corrections,  
216 acted in conformity with departmental rule or policy;

217 (b) [~~with respect to~~] a correctional facility operated by a municipality, acted in  
218 conformity with the policy of the municipality;

219 (c) [~~with respect to~~] a correctional facility operated by a county, acted in conformity  
220 with the policy of the county; or

221 (d) [~~with respect to~~] a mental health facility, acted in conformity with the policy of the  
222 mental health facility.

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

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

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

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

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

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

241 (i) spirituous or fermented liquor;

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



243 (iii) poison in any quantity.

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

247 (i) spirituous or fermented liquor;

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

249 (iii) poison in any quantity.

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

253 (i) spirituous or fermented liquor;

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

256 (iii) poison in any quantity.

257 (d) A person is guilty of a class A misdemeanor who, with the intent to directly or  
258 indirectly provide or sell any tobacco product or nicotine product to an offender, directly or  
259 indirectly:

260 (i) transports, delivers, or distributes any tobacco product or nicotine product to an  
261 offender or on the grounds of any correctional facility;

262 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another  
263 person to transport any tobacco product or nicotine product to an offender or on any  
264 correctional facility, if the person is acting with the mental state required for the commission of  
265 an offense; or

266 (iii) facilitates, arranges, or causes the transport of any tobacco product or nicotine  
267 product in violation of this section to an offender or on the grounds of any correctional facility.

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

271 (i) spirituous or fermented liquor;

272 (ii) medicine; or

273 (iii) poison in any quantity.

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

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

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

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

287 Section 5. Section **76-10-3001** is enacted to read:

288 **Part 30. Nicotine Product Restrictions Act**

289 **76-10-3001. Title.**

290 This part is known as the "Nicotine Product Restrictions Act."

291 Section 6. Section **76-10-3002** is enacted to read:

292 **76-10-3002. Definitions.**

293 As used in this part:

294 (1) "Nicotine product" means any product that:

295 (a) (i) contains nicotine; and

296 (ii) does not contain tobacco; or

297 (b) (i) contains both nicotine and tobacco; and

298 (ii) is in any of the following forms:

299 (A) a lozenge;

300 (B) a stick, except plug tobacco, that is produced to be, or intended to be, dissolved in  
301 the oral cavity;

302 (C) a flat strip;

303 (D) hard or soft candy;

304 (E) a tablet;

- 305           (F) gel;
- 306           (G) paste;
- 307           (H) gum;
- 308           (I) lotion; or
- 309           (J) an item or substance that is similar to an item or substance described in Subsections
- 310 (1)(b)(ii)(A) through (I).
- 311           (2) "Place of business" includes:
- 312           (a) a shop;
- 313           (b) a store;
- 314           (c) a factory;
- 315           (d) a public garage;
- 316           (e) an office;
- 317           (f) a theater;
- 318           (g) a recreation hall;
- 319           (h) a dance hall;
- 320           (i) a poolroom;
- 321           (j) a café;
- 322           (k) a cafeteria;
- 323           (l) a cabaret;
- 324           (m) a restaurant;
- 325           (n) a hotel;
- 326           (o) a lodging house;
- 327           (p) a streetcar;
- 328           (q) a bus;
- 329           (r) an interurban or railway passenger coach;
- 330           (s) a waiting room; and
- 331           (t) any other place of business.
- 332           (3) (a) "Provides" means selling, offering for sale, giving, furnishing, sending, or
- 333 causing to be sent.
- 334           (b) "Provides" does not include:
- 335           (i) the acts of the United States Postal Service or other common carrier when engaged

336 in the business of transporting and delivering packages for others; or

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

339 Section 7. Section **76-10-3003** is enacted to read:

340 **76-10-3003. Provision of nicotine product prohibited.**

341 (1) Except as provided in Subsection (2) or (3), a person who provides a nicotine  
342 product to another is guilty of a class C misdemeanor on the first offense and a class B  
343 misdemeanor on each subsequent offense.

344 (2) Subsection (1) does not apply if the nicotine product is:

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

347 (ii) provided for the purpose for which it is approved; or

348 (b) approved by the United States Food and Drug Administration for general consumer  
349 use other than a use described in Subsection (2)(a)(i).

350 (3) (a) As used in this section, "electronic cigarette" means any device, other than a  
351 cigarette or cigar, intended to deliver vapor containing nicotine into a person's respiratory  
352 system.

353 (b) A person is not guilty of an offense under this section if the nicotine product is  
354 produced to be, and intended to be, used only to produce vapor in an electronic cigarette.

355 Section 8. Section **76-10-3004** is enacted to read:

356 **76-10-3004. Provision of nicotine product to minor prohibited.**

357 (1) Except as provided in Subsection (2), a person who provides a nicotine product to a  
358 person who is under the age of 19 is guilty of a class C misdemeanor on the first offense, a  
359 class B misdemeanor on the second offense, and a class A misdemeanor on each subsequent  
360 offense.

361 (2) Subsection (1) does not apply if the nicotine product is:

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

364 (b) provided by a prescription.

365 Section 9. Section **76-10-3005** is enacted to read:

366 **76-10-3005. Buying or possessing a nicotine product by a minor -- Penalty --**

367 **Compliance officer authority -- Juvenile court jurisdiction.**

368 (1) Except as provided in Subsection (4), any 18 year-old person who buys or attempts  
369 to buy, accepts, or has in the person's possession a nicotine product is guilty of a class C  
370 misdemeanor and subject to a minimum fine or penalty of \$60.

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

374 (3) A compliance officer appointed by a board of education under Section 53A-3-402  
375 may issue a citation for a violation of this section committed on school property. A cited  
376 violation shall be reported to the appropriate juvenile court.

377 (4) This section does not apply to a nicotine product that is:

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

380 (b) provided to the person described in this section by prescription.

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

382 **76-10-3006. Requirement of direct, face-to-face sale of a nicotine product --**

383 **Penalties.**

384 (1) As used in this section:

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

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

390 (2) (a) Except as provided in Subsection (3), a retailer who is permitted to sell a  
391 nicotine product under Subsection 76-10-3003(2)(b) may only sell the nicotine product in a  
392 direct, face-to-face exchange between:

393 (i) an employee of the retailer; and

394 (ii) the purchaser.

395 (b) Examples of methods of sale that are not permitted under this Subsection (2)  
396 include a vending machine or a self-service display.

397 (c) Subsections (2)(a) and (b) do not prohibit the use or display of a locked cabinet

398 containing a nicotine product if the locked cabinet is accessible only to the retailer or an  
399 employee of the retailer.

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

401 (a) mail-order sales of a nicotine product, if the sale is to a manufacturer, retailer, or  
402 wholesaler who is permitted to sell a nicotine product under Subsection 76-10-3003(2)(b);

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

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

408 (i) which derives at least 80% of its revenue from:

409 (A) tobacco;

410 (B) tobacco related products; or

411 (C) nicotine products that the retailer is permitted to sell under Subsection  
412 76-10-3003(2)(b); and

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

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

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

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

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

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

425 (c) class A misdemeanor on the third and all subsequent offenses.

426 Section 11. Section **76-10-3007** is enacted to read:

427 **76-10-3007. Prohibition of gift or free distribution of a nicotine product --**

428 **Exceptions.**

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

431 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,  
432 or retailer to provide or distribute without charge any nicotine product. Any person who  
433 violates this section is guilty of a class C misdemeanor for the first offense, and is guilty of a  
434 class B misdemeanor for any subsequent offense.

435 (3) (a) A person who is permitted to provide a nicotine product under Subsection  
436 76-10-3003(2)(b) may provide the nicotine product to a person who is over the age of 18  
437 without charge at professional conventions where the general public is excluded.

438 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who:  
439 (i) is permitted to provide a nicotine product under Subsection 76-10-3003(2)(b); and  
440 (ii) gives the nicotine product described in Subsection (3)(b)(i) to a person who is over  
441 the age of 18 upon the person's purchase of:

442 (A) another nicotine product that the person is permitted to provide under Subsection  
443 76-10-3003(2)(b); or

444 (B) a tobacco product.

445 Section 12. Section **77-39-101** is amended to read:

446 **77-39-101. Investigation of sales of alcohol, tobacco, or a nicotine product to an**  
447 **underage person.**

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

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

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

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

455 (A) a cigar;

456 (B) a cigarette; [or]

457 (C) tobacco in any form[-]; or

458 (D) a nicotine product.

459 (b) A peace officer who is present at the site of a proposed purchase shall direct,

460 supervise, and monitor the individual requested to make the purchase.

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

464 (i) alcohol; or

465 (ii) (A) a cigar;

466 (B) a cigarette; ~~or~~

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

468 (D) a nicotine product.

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

471 ~~[(2)]~~ (3) (a) If an individual under the age of 18 years old is requested to attempt a  
472 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that  
473 individual participating in any attempted purchase.

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

475 (i) be a trained volunteer; or

476 (ii) receive payment, but may not be paid based on the number of successful purchases  
477 of alcohol ~~or~~, tobacco, or a nicotine product.

478 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and  
479 anyone accompanying the individual attempting a purchase may not during the attempted  
480 purchase misrepresent the age of the individual by false or misleading identification  
481 documentation in attempting the purchase.

482 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant to  
483 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted  
484 purchase of, or possession of alcohol, a cigar, a cigarette, ~~or~~ tobacco in any form, or a  
485 nicotine product if a peace officer directs, supervises, and monitors the individual.

486 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), a purchase attempted under  
487 this section shall be conducted:

488 (i) on a random basis; and

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



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

492 (I) a cigar;

493 (II) a cigarette; [~~or~~]

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

495 (IV) a nicotine product; and

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

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

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

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

503 [~~(6)~~] (7) (a) The peace officer exercising direction, supervision, and monitoring of the  
504 attempted purchase shall make a report of the attempted purchase, whether or not a purchase  
505 was made.

506 (b) The report required by this Subsection [~~(6)~~] (7) shall include:

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

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

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

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

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

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

515 Section 13. **Coordinating H.B. 71 with H.B. 88 -- Technical amendments.**

516 If this H.B. 71 and H.B. 88, Electronic Cigarette Restrictions, both pass, it is the intent  
517 of the Legislature that the Office of Legislative Research and General Counsel shall prepare the  
518 Utah Code database for publication by:

519 (1) modifying Subsection 53-3-229(3)(c) to read as follows:

520 "(c) [~~knowingly~~] acquire, use, display, or transfer a false or altered driver  
521 license certificate to procure [~~cigarettes, tobacco, or tobacco products.~~];

522           (i) a cigarette;  
523           (ii) an electronic cigarette, as defined in Section 76-10-101;  
524           (iii) a nicotine product, as defined in Section 76-10-3002;  
525           (iv) tobacco; or  
526           (v) a tobacco product.";  
527           (2) modifying Subsection 53-3-810(2)(c) to read as follows:  
528           "(c) [~~knowingly~~] acquire, use, display, or transfer a false or altered  
529 identification card to procure [~~cigarettes, tobacco, or tobacco products.~~]:  
530           (i) a cigarette;  
531           (ii) an electronic cigarette, as defined in Section 76-10-101;  
532           (iii) a nicotine product, as defined in Section 76-10-3002;  
533           (iv) tobacco; or  
534           (v) a tobacco product.";  
535           (3) modifying Subsection 53A-11-908(2)(b)(ii) to read as follows:  
536           "(ii) illicit use, possession, or distribution of controlled substances or drug  
537 paraphernalia, and the use, possession, or distribution of the following, contrary to law:  
538           (A) an electronic cigarette, as defined in Section 76-10-101;  
539           (B) a nicotine product, as defined in Section 76-10-3002;  
540           (C) tobacco; or  
541           (D) alcoholic beverages [~~contrary to law~~]; and"  
542           (4) modifying Subsection 76-8-311.3(1) to read as follows:  
543           "(1) As used in this section:  
544           (a) "Contraband" means any item not specifically prohibited for possession by  
545 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.  
546           (b) "Controlled substance" means any substance defined as a controlled substance  
547 under Title 58, Chapter 37, Utah Controlled Substances Act.  
548           (c) "Correctional facility" means:  
549           (i) any facility operated by or contracting with the Department of Corrections to house  
550 offenders in either a secure or nonsecure setting;  
551           (ii) any facility operated by a municipality or a county to house or detain criminal  
552 offenders;

553 (iii) any juvenile detention facility; and

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

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

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

560 ~~[(e)]~~ (f) "Mental health facility" [has the same meaning] is as defined in Section  
561 62A-15-602.

562 (g) "Nicotine product" is as defined in Section 76-10-3002.

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

564 ~~[(h)]~~ (i) "Secure area" [has the same meaning as provided] is as defined in Section  
565 76-8-311.1.";

566 (5) modifying Subsection 76-8-311.3(5)(d) to read as follows:

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

570 (i) transports, delivers, or distributes any tobacco product, electronic cigarette, or  
571 nicotine product to an offender or on the grounds of any correctional facility;

572 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another  
573 person to transport any tobacco product, electronic cigarette, or nicotine product to an offender  
574 or on any correctional facility, if the person is acting with the mental state required for the  
575 commission of an offense; or

576 (iii) facilitates, arranges, or causes the transport of any tobacco product, electronic  
577 cigarette, or nicotine product in violation of this section to an offender or on the grounds of any  
578 correctional facility.";

579 (6) modifying Subsection 76-8-311.3(5)(f) to read as follows:

580 "(f) A person is guilty of a class B misdemeanor who, without the permission of the  
581 authority operating the correctional facility, knowingly engages in any activity that would  
582 facilitate the possession of any contraband by an offender in a correctional facility. The  
583 provisions of Subsection (5)(d) regarding any tobacco product, electronic cigarette, or nicotine

584 product take precedence over this Subsection (5)(f).";

585 (7) modifying Subsection 76-8-311.3(7) to read as follows:

586 "(7) The department shall make rules under Title 63G, Chapter 3, Utah

587 Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors

588 that providing any tobacco product, electronic cigarette, or nicotine product to offenders is a

589 class A misdemeanor."; and

590 (8) modifying Section 77-39-101 to read as follows:

591 "77-39-101. Investigation of sales of alcohol, tobacco, an electronic cigarette, or a

592 nicotine product to an underage person.

593 (1) As used in this section:

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

595 (b) "Nicotine product" is as defined in Section 76-10-3002.

596 [~~+~~] (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer

597 Classifications, may investigate the possible violation of:

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

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

602 (A) a cigar;

603 (B) a cigarette; [~~or~~]

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

605 (D) an electronic cigarette; or

606 (E) a nicotine product.

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

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

612 (i) alcohol; or

613 (ii) (A) a cigar;

614 (B) a cigarette; [~~or~~]

615 (C) tobacco in any form[-];

616 (D) an electronic cigarette; or

617 (E) a nicotine product.

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

620 [~~(2)~~] (3) (a) If an individual under the age of 18 years old is requested to attempt a  
621 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that  
622 individual participating in any attempted purchase.

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

624 (i) be a trained volunteer; or

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

627 [~~(3)~~] (4) The individual requested by the peace officer to attempt a purchase and anyone  
628 accompanying the individual attempting a purchase may not during the attempted purchase  
629 misrepresent the age of the individual by false or misleading identification documentation in  
630 attempting the purchase.

631 [~~(4)~~] (5) An individual requested to attempt to purchase or make a purchase pursuant to  
632 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted  
633 purchase of, or possession of alcohol, a cigar, a cigarette, [~~or~~] tobacco in any form, an  
634 electronic cigarette, or a nicotine product if a peace officer directs, supervises, and monitors the  
635 individual.

636 [(5)] (6) (a) Except as provided in Subsection [~~(5)~~](6)(b), a purchase attempted under  
637 this section shall be conducted:

638 (i) on a random basis; and

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

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

642 (I) a cigar;

643 (II) a cigarette; [~~or~~]

644 (III) tobacco in any form; [~~and~~]

645 (IV) an electronic cigarette; or

646           (V) a nicotine product; and  
647           (B) four times for the attempted purchase of alcohol.  
648           (b) Nothing in this section shall prohibit an investigation under this section if:  
649           (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a  
650           cigar, a cigarette, ~~[or]~~ tobacco in any form, an electronic cigarette, or a nicotine product to an  
651           individual under the age established by Section 32A-12-203 ~~[or]~~, 76-10-104, or 76-10-3004;  
652           and  
653           (ii) the supervising peace officer makes a written record of the grounds for the  
654           reasonable suspicion.  
655           ~~[(6)]~~ (7) (a) The peace officer exercising direction, supervision, and monitoring of the  
656           attempted purchase shall make a report of the attempted purchase, whether or not a purchase  
657           was made.  
658           (b) The report required by this Subsection ~~[(6)]~~ (7) shall include:  
659           (i) the name of the supervising peace officer;  
660           (ii) the name of the individual attempting the purchase;  
661           (iii) a photograph of the individual attempting the purchase showing how that  
662           individual appeared at the time of the attempted purchase;  
663           (iv) the name and description of the cashier or proprietor from whom the individual  
664           attempted the purchase;  
665           (v) the name and address of the retail establishment; and  
666           (vi) the date and time of the attempted purchase."