

Representative Paul Ray proposes the following substitute bill:

NICOTINE PRODUCT RESTRICTIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Wayne L. Niederhauser

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) ~~H~~→ or (3) ←~~H~~ , a person who provides a
341a nicotine product to
342 another is guilty of a class C misdemeanor on the first offense and a class B misdemeanor on
343 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).

349a **~~H~~→ (3) (a) As used in this section, "electronic cigarette" means any device, other than a**
349b **cigarette or cigar, intended to deliver vapor containing nicotine into a person's respiratory**
349c **system.**

349d **(b) A person is not guilty of an offense under this section if the nicotine product is**
349e **produced to be, and intended to be, used only to produce vapor in an electronic cigarette.** ←~~H~~

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

351 **76-10-3004. Provision of nicotine product to minor prohibited.**

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

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

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

359 (b) provided by a prescription.

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

361 **76-10-3005. Buying or possessing a nicotine product by a minor -- Penalty --**
362 **Compliance officer authority -- Juvenile court jurisdiction.**

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

366 (2) Except as provided in Subsection (4), any person under the age of 18 who buys or

367 attempts to buy, accepts, or has in the person's possession a nicotine product is subject to the
368 jurisdiction of the juvenile court and a minimum fine or penalty of \$60.

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

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

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

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

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

377 **76-10-3006. Requirement of direct, face-to-face sale of a nicotine product --**

378 **Penalties.**

379 (1) As used in this section:

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

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

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

388 (i) an employee of the retailer; and

389 (ii) the purchaser.

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

392 (c) Subsections (2)(a) and (b) do not prohibit the use or display of a locked cabinet
393 containing a nicotine product if the locked cabinet is accessible only to the retailer or an
394 employee of the retailer.

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

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

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

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

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

404 (A) tobacco;

405 (B) tobacco related products; or

406 (C) nicotine products that the retailer is permitted to sell under Subsection
407 76-10-3003(2)(b); and

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

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

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

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

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

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

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

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

422 **76-10-3007. Prohibition of gift or free distribution of a nicotine product --**

423 **Exceptions.**

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

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

429 class B misdemeanor for any subsequent offense.

430 (3) (a) A person who is permitted to provide a nicotine product under Subsection
431 76-10-3003(2)(b) may provide the nicotine product to a person who is over the age of 18
432 without charge at professional conventions where the general public is excluded.

433 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who:

434 (i) is permitted to provide a nicotine product under Subsection 76-10-3003(2)(b); and

435 (ii) gives the nicotine product described in Subsection (3)(b)(i) to a person who is over
436 the age of 18 upon the person's purchase of:

437 (A) another nicotine product that the person is permitted to provide under Subsection
438 76-10-3003(2)(b); or

439 (B) a tobacco product.

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

441 **77-39-101. Investigation of sales of alcohol, tobacco, or a nicotine product to an**
442 **underage person.**

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

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

445 Classifications, may investigate the possible violation of:

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

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

450 (A) a cigar;

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

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

453 (D) a nicotine product.

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

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

459 (i) alcohol; or

- 460 (ii) (A) a cigar;
- 461 (B) a cigarette; [or]
- 462 (C) tobacco in any form[:]; or
- 463 (D) a nicotine product.
- 464 (d) If a citation or information is issued, it shall be issued within seven days of the
- 465 purchase.

466 [~~2~~] (3) (a) If an individual under the age of 18 years old is requested to attempt a

467 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that

468 individual participating in any attempted purchase.

- 469 (b) An individual requested by the peace officer to attempt a purchase may:
- 470 (i) be a trained volunteer; or
- 471 (ii) receive payment, but may not be paid based on the number of successful purchases
- 472 of alcohol [or], tobacco, or a nicotine product.

473 [~~3~~] (4) The individual requested by the peace officer to attempt a purchase and

474 anyone accompanying the individual attempting a purchase may not during the attempted

475 purchase misrepresent the age of the individual by false or misleading identification

476 documentation in attempting the purchase.

477 [~~4~~] (5) An individual requested to attempt to purchase or make a purchase pursuant to

478 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted

479 purchase of, or possession of alcohol, a cigar, a cigarette, [or] tobacco in any form, or a

480 nicotine product if a peace officer directs, supervises, and monitors the individual.

481 [~~5~~] (6) (a) Except as provided in Subsection [~~5~~] (6)(b), a purchase attempted under

482 this section shall be conducted:

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

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

- 487 (I) a cigar;
- 488 (II) a cigarette; [or]
- 489 (III) tobacco in any form; [~~and~~] or
- 490 (IV) a nicotine product; and

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

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

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

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

498 ~~[(6)]~~ (7) (a) The peace officer exercising direction, supervision, and monitoring of the
499 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
500 was made.

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

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

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

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

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

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

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

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

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

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

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

517 (i) a cigarette;

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

519 (iii) a nicotine product, as defined in Section 76-10-3002;

520 (iv) tobacco; or

521 (v) a tobacco product."

522 (2) modifying Subsection 53-3-810(2)(c) to read as follows:

523 "(c) [~~knowingly~~] acquire, use, display, or transfer a false or altered

524 identification card to procure [~~cigarettes, tobacco, or tobacco products.~~];

525 (i) a cigarette;

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

527 (iii) a nicotine product, as defined in Section 76-10-3002;

528 (iv) tobacco; or

529 (v) a tobacco product.";

530 (3) modifying Subsection 53A-11-908(2)(b)(ii) to read as follows:

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

532 paraphernalia, and the use, possession, or distribution of the following, contrary to law:

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

534 (B) a nicotine product, as defined in Section 76-10-3002;

535 (C) tobacco; or

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

537 (4) modifying Subsection 76-8-311.3(1) to read as follows:

538 "(1) As used in this section:

539 (a) "Contraband" means any item not specifically prohibited for possession by

540 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

541 (b) "Controlled substance" means any substance defined as a controlled substance

542 under Title 58, Chapter 37, Utah Controlled Substances Act.

543 (c) "Correctional facility" means:

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

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

548 (iii) any juvenile detention facility; and

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

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

552 [~~(d)~~] (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,

553 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
554 Chapter 37, Utah Controlled Substances Act.

555 ~~[(e)]~~ (f) "Mental health facility" ~~[has the same meaning]~~ is as defined in Section
556 62A-15-602.

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

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

559 ~~[(g)]~~ (i) "Secure area" ~~[has the same meaning as provided]~~ is as defined in Section
560 76-8-311.1.";

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

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

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

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

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

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

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

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

581 "(7) The department shall make rules under Title 63G, Chapter 3, Utah
582 Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors
583 that providing any tobacco product, electronic cigarette, or nicotine product to offenders is a

584 class A misdemeanor."; and

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

586 **"77-39-101. Investigation of sales of alcohol, tobacco, an electronic cigarette, or a**
587 **nicotine product to an underage person.**

588 (1) As used in this section:

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

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

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

592 Classifications, may investigate the possible violation of:

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

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

597 (A) a cigar;

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

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

600 ~~(D) an electronic cigarette; or~~

601 ~~(E) a nicotine product.~~

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

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

607 (i) alcohol; or

608 (ii) (A) a cigar;

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

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

611 ~~(D) an electronic cigarette; or~~

612 ~~(E) a nicotine product.~~

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

615 ~~[(2)]~~ (3) (a) If an individual under the age of 18 years old is requested to attempt a
616 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that
617 individual participating in any attempted purchase.

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

619 (i) be a trained volunteer; or

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

622 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and anyone
623 accompanying the individual attempting a purchase may not during the attempted purchase
624 misrepresent the age of the individual by false or misleading identification documentation in
625 attempting the purchase.

626 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant to
627 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted
628 purchase of, or possession of alcohol, a cigar, a cigarette, ~~[or]~~ tobacco in any form, an
629 electronic cigarette, or a nicotine product if a peace officer directs, supervises, and monitors the
630 individual.

631 [(5)] (6) (a) Except as provided in Subsection ~~[(5)]~~(6)(b), a purchase attempted under
632 this section shall be conducted:

633 (i) on a random basis; and

634 (ii) within a 12-month period at any one retail establishment location not more often

635 than:

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

637 (I) a cigar;

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

639 (III) tobacco in any form; ~~and]~~

640 (IV) an electronic cigarette; or

641 (V) a nicotine product; and

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

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

644 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
645 cigar, a cigarette, ~~[or]~~ tobacco in any form, an electronic cigarette, or a nicotine product to an

646 individual under the age established by Section 32A-12-203 [~~or~~], 76-10-104, or 76-10-3004;
647 and

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

650 [~~(6)~~] (7) (a) The peace officer exercising direction, supervision, and monitoring of the
651 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
652 was made.

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

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

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

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

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

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

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

H.B. 71 3rd Sub. (Cherry) - Nicotine Product Restrictions

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will have an ongoing net General Fund impact of \$4,300. The Courts will require \$8,600 in ongoing General Funds for increased workload costs. The bill generates \$4,300 in ongoing General Fund revenue and \$4,300 in restricted fund revenue.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$8,600	\$8,600	\$0	\$4,300	\$4,300
Restricted Funds	\$0	\$0	\$0	\$0	\$4,300	\$4,300
Total	\$0	\$8,600	\$8,600	\$0	\$8,600	\$8,600

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local jails may be impacted in increased offender housing costs.