

NICOTINE PRODUCT RESTRICTIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

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



- 28 ▶ describes when free distribution of a nicotine product is prohibited and provides
- 29 criminal penalties for violation of those prohibitions;
- 30 ▶ addresses advertising requirements relating to a nicotine product; and
- 31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

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 **76-10-3008**, Utah Code Annotated 1953



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

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

55 **53-3-229. Prohibited uses of license certificate -- Penalty.**

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

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

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

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

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

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

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

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

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

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

76 (a) [~~knowingly~~] issue a driver license certificate with false or fraudulent information;

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

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

82 (i) cigarettes[;];

83 (ii) tobacco[; ~~or tobacco products~~.];

84 (iii) a tobacco product; or

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

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

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

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

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

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

95 **53-3-810. Prohibited uses of identification card -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

119 (i) cigarettes[;];

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

121 (iii) a tobacco product; or

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

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

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

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

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

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

132 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**
133 **violations -- Limitation of liability.**

134 (1) The Legislature recognizes that:

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

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

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

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

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

151 (2) (a) The State Board of Education may, and local boards of education and governing

152 boards of charter schools shall, adopt rules implementing this section that apply to both
153 students and staff.

154 (b) Those rules shall include prohibitions against the following types of conduct, while
155 in the classroom, on school property, during school sponsored activities, or regardless of the
156 location or circumstance, affecting a person or property described in Subsections
157 53A-11-902(5)(a) through (d):

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

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

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

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

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

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

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

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

176 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

177 **Penalties.**

178 (1) As used in this section:

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

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

183 (c) "Correctional facility" means:

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

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

188 (iii) any juvenile detention facility; and

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

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

194 (e) "Mental health facility" [~~has the same meaning~~] is as defined in Section
195 62A-15-602.

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

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

198 [~~(g)~~] (h) "Secure area" [~~has the same meaning as provided~~] is as defined in Section
199 76-8-311.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

236 (i) spirituous or fermented liquor;

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

238 (iii) poison in any quantity.

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

242 (i) spirituous or fermented liquor;

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

244 (iii) poison in any quantity.

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

248 (i) spirituous or fermented liquor;

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

251 (iii) poison in any quantity.

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

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

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

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

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

266 (i) spirituous or fermented liquor;

267 (ii) medicine; or

268 (iii) poison in any quantity.

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

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

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

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

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

283 **Part 30. Nicotine Product Restriction Act**

284 **76-10-3001. Title.**

285 This part is known as the "Nicotine Product Restriction Act."

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

287 **76-10-3002. Definitions.**

288 As used in this part:

289 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
290 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
291 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
292 in Subsection (2).

293 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
294 ordinary conditions of use, and consists of:

295 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

296 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
297 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
298 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

299 (3) "Cigarette tobacco" means a product that consists of loose tobacco that contains or
300 delivers nicotine and is intended for use by a consumer in a cigarette.

301 (4) "Nicotine product" means, except as provided in Subsection (4)(b), any product or
302 substance, other than a cigar, cigarette, or smokeless tobacco that:

303 (a) is intended to deliver nicotine into a person's body; and

304 (b) (i) (A) does not contain tobacco; and

305 (B) contains nicotine; or

306 (ii) (A) contains tobacco; and

307 (B) contains nicotine other than, or in addition to, nicotine that is naturally present in
308 the tobacco described in Subsection (4)(b)(ii)(A).

309 (5) "Pipe tobacco" means a product that consists of loose tobacco that contains or
310 delivers nicotine and is intended to be smoked by a consumer in a pipe.

311 (6) "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 (7) (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 (8) (a) "Smokeless tobacco" means a product, other than a cigar or cigarette, that,

340 except as provided in Subsection (8)(b):

341 (i) consists of cut, ground, powdered, or leaf tobacco;

342 (ii) contains nicotine; and

343 (iii) is intended to be placed in the oral cavity.

344 (b) "Smokeless tobacco" does not include a product that contains nicotine other than,
345 or in addition to, nicotine that is naturally present in the tobacco.

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

347 **76-10-3003. Provision of nicotine product prohibited.**

348 (1) Except as provided in Subsection (2), a person who provides a nicotine product to
349 another is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the
350 second offense, and a class A misdemeanor on each subsequent offense.

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

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

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

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

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

358 **76-10-3004. Provision of nicotine product to minor prohibited.**

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

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

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

366 (b) provided by a prescription.

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

368 **76-10-3005. Buying or possessing a nicotine product by a minor -- Penalty --**

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

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

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

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

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

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

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

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

384 **76-10-3006. Requirement of direct, face-to-face sale of nicotine products --**

385 **Penalties.**

386 (1) As used in this section:

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

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

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

395 (i) an employee of the retailer; and

396 (ii) the purchaser.

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

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

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

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

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

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

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

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

411 (A) tobacco;

412 (B) tobacco related products; or

413 (C) nicotine products that the retailer is permitted to sell under Subsection
414 76-10-3003(2)(b); and

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

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

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

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

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

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

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

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

429 **76-10-3007. Prohibition of gift or free distribution of a nicotine product --**

430 **Exceptions.**

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

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

437 (3) (a) A person who is permitted to provide a nicotine product under Subsection
438 76-10-3003(2)(b) may provide the nicotine product to a person who is over the age of 18
439 without charge at professional conventions where the general public is excluded.

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

444 (A) another nicotine product that the person is permitted to provide under Subsection
445 76-10-3003(2)(b); or

446 (B) a tobacco product.

447 Section 12. Section **76-10-3008** is enacted to read:

448 **76-10-3008. Nicotine product -- Advertising restrictions -- Warnings in**
449 **advertisements.**

450 (1) Except as provided in Subsections (2) or (3), it is a class B misdemeanor for any
451 person to display on any billboard, streetcar sign, streetcar, bus, placard, or on any other object
452 or place of display, any advertisement of a nicotine product.

453 (2) A dealer in a nicotine product that is approved by the United States Food and Drug
454 Administration for general consumer use may have a sign on the front of the dealer's place of
455 business stating that the dealer deals in a nicotine product.

456 (3) This section does not prohibit the advertising of a nicotine product in any
457 newspaper, magazine, or periodical printed or circulating in this state.

458 (4) Any advertisement for a nicotine product that is placed in a newspaper, magazine,
459 or periodical published in this state must bear a warning which states: "This product contains
460 nicotine. Nicotine is addictive." This warning must be in a conspicuous location and in
461 conspicuous and legible type, in contrast with the typography, layout, and color of all other

462 printed material in the advertisement.

463 (5) If federal law requires warnings in advertisements of a nicotine product, the
464 specific language required to be placed in advertisements for that product by that legislation
465 shall take precedence over Subsection (4).

466 Section 13. Section **77-39-101** is amended to read:

467 **77-39-101. Investigation of sales of alcohol, tobacco, or a nicotine product to an**
468 **underage person.**

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

470 ~~[(1)]~~ (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
471 Classifications, may investigate the possible violation of:

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

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

476 (A) a cigar;

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

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

479 (D) a nicotine product.

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

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

485 (i) alcohol; or

486 (ii) (A) a cigar;

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

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

489 (D) a nicotine product.

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

492 ~~[(2)]~~ (3) (a) If an individual under the age of 18 years old is requested to attempt a

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

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

496 (i) be a trained volunteer; or

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

499 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and
500 anyone accompanying the individual attempting a purchase may not during the attempted
501 purchase misrepresent the age of the individual by false or misleading identification
502 documentation in attempting the purchase.

503 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant to
504 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted
505 purchase of, or possession of alcohol, a cigar, a cigarette, ~~[or]~~ tobacco in any form, or a
506 nicotine product if a peace officer directs, supervises, and monitors the individual.

507 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), a purchase attempted under
508 this section shall be conducted:

509 (i) on a random basis; and

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

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

513 (I) a cigar;

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

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

516 (IV) a nicotine product; and

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

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

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

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

524 [~~(6)~~] (7) (a) The peace officer exercising direction, supervision, and monitoring of the
525 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
526 was made.

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

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

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

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

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

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

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

Legislative Review Note

as of 12-21-09 2:01 PM

Office of Legislative Research and General Counsel

H.B. 71 - 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.
