

Senator Wayne L. Niederhauser proposes the following substitute bill:

NICOTINE PRODUCT RESTRICTIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Wayne L. Niederhauser

6	Cosponsors:	Brad L. Dee	Steven R. Mascaro
7	Sheryl L. Allen	Kevin S. Garn	Kraig Powell
8	Trisha S. Beck	Eric K. Hutchings	Stephen E. Sandstrom

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,



26 obtaining, or possession of a nicotine product;

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

28 bill; and

29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill coordinates with H.B. 88, Electronic Cigarette Restrictions, by providing

34 technical amendments.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197

38 **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197

39 **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161

40 **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382

41 **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342

42 ENACTS:

43 **76-10-3001**, Utah Code Annotated 1953

44 **76-10-3002**, Utah Code Annotated 1953

45 **76-10-3003**, Utah Code Annotated 1953

46 **76-10-3004**, Utah Code Annotated 1953

47 **76-10-3005**, Utah Code Annotated 1953

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

49 **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197

50 **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197

51 **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161

52 **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382

53 **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342



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

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

57 **53-3-229. Prohibited uses of license certificate -- Penalty.**

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

59 (a) lend or knowingly permit the use of a license certificate issued to the person, by a
60 person not entitled to it;61 (b) display or to represent as the person's own a license certificate not issued to the
62 person;63 (c) refuse to surrender to the division or a peace officer upon demand any license
64 certificate issued by the division;65 (d) use a false name or give a false address in any application for a license or any
66 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to
67 knowingly conceal a material fact or otherwise commit a fraud in the application;68 (e) display a canceled, denied, revoked, suspended, or disqualified driver license
69 certificate as a valid driver license certificate;70 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
71 driver license certificate issued by a governmental entity if the item is not an authentic driver
72 license certificate issued by that governmental entity; or73 (g) alter any information on an authentic driver license certificate so that it no longer
74 represents the information originally displayed.75 (2) The provisions of Subsection (1)(e) do not prohibit the use of a person's driver
76 license certificate as a means of personal identification.77 (3) It is a class A misdemeanor to knowingly:78 (a) [~~knowingly~~] issue a driver license certificate with false or fraudulent information;79 (b) [~~knowingly~~] issue a driver license certificate to a person younger than 21 years of
80 age if the driver license certificate is not distinguished as required for a person younger than 21
81 years of age under Section 53-3-207; or82 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered driver license
83 certificate to procure:84 (i) cigarettes[~~;~~];85 (ii) tobacco[~~;~~~~or tobacco products~~];86 (iii) a tobacco product; or87 (iv) a nicotine product, as defined in Section 76-10-3002.

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

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

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

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

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

97 **53-3-810. Prohibited uses of identification card -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

121 (i) cigarettes[;];

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

123 (iii) a tobacco product; or

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

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

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

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

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

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

134 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**
135 **violations -- Limitation of liability.**

136 (1) The Legislature recognizes that:

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

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

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

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

149 (e) it is of the utmost importance that those involved in student government, whether as

150 officers or advisors, and those involved in competitive athletics and related activities, whether
151 students or staff, comply with all applicable laws and rules of behavior and conduct themselves
152 at all times in a manner befitting their positions and responsibilities.

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

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

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

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

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

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

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

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

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

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

178 **76-8-311.3. Items prohibited in correctional and mental health facilities --**
179 **Penalties.**

180 (1) As used in this section:

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

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

185 (c) "Correctional facility" means:

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

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

190 (iii) any juvenile detention facility; and

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

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

196 (e) "Mental health facility" [~~has the same meaning~~] is as defined in Section
197 62A-15-602.

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

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

200 [~~(g)~~] (h) "Secure area" [~~has the same meaning as provided~~] is as defined in Section
201 76-8-311.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 (i) spirituous or fermented liquor;

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

240 (iii) poison in any quantity.

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

243 facility or detainee within a secure area of a mental health facility any:

244 (i) spirituous or fermented liquor;

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

246 (iii) poison in any quantity.

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

250 (i) spirituous or fermented liquor;

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

253 (iii) poison in any quantity.

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

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

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

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

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

268 (i) spirituous or fermented liquor;

269 (ii) medicine; or

270 (iii) poison in any quantity.

271 (f) A person is guilty of a class B misdemeanor who, without the permission of the
272 authority operating the correctional facility, knowingly engages in any activity that would
273 facilitate the possession of any contraband by an offender in a correctional facility. The

274 provisions of Subsection (5)(d) regarding any tobacco product or nicotine product take
275 precedence over this Subsection (5)(f).

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

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

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

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

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

286 **76-10-3001. Title.**

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

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

289 **76-10-3002. Definitions.**

290 As used in this part:

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

292 (a) (i) contains nicotine; and

293 (ii) does not contain tobacco; or

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

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

296 (A) a lozenge;

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

299 (C) a flat strip;

300 (D) hard or soft candy;

301 (E) a tablet;

302 (F) gel;

303 (G) paste;

304 (H) gum;

- 305 (I) lotion; or
306 (J) an item or substance that is similar to an item or substance described in Subsections
307 (1)(b)(ii)(A) through (I).
- 308 (2) "Place of business" includes:
309 (a) a shop;
310 (b) a store;
311 (c) a factory;
312 (d) a public garage;
313 (e) an office;
314 (f) a theater;
315 (g) a recreation hall;
316 (h) a dance hall;
317 (i) a poolroom;
318 (j) a café;
319 (k) a cafeteria;
320 (l) a cabaret;
321 (m) a restaurant;
322 (n) a hotel;
323 (o) a lodging house;
324 (p) a streetcar;
325 (q) a bus;
326 (r) an interurban or railway passenger coach;
327 (s) a waiting room; and
328 (t) any other place of business.
- 329 (3) (a) "Provides" means selling, offering for sale, giving, furnishing, sending, or
330 causing to be sent.
- 331 (b) "Provides" does not include:
332 (i) the acts of the United States Postal Service or other common carrier when engaged
333 in the business of transporting and delivering packages for others; or
334 (ii) the acts of a person, whether compensated or not, who transports or delivers a
335 package for another person without any reason to know of the package's content.

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

337 **76-10-3003. Provision of nicotine product prohibited.**

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

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

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

344 (b) provided for the purpose for which it is approved.

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

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

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 **77-39-101** is amended to read:

377 **77-39-101. Investigation of sales of alcohol, tobacco, or a nicotine product to an**
 378 **underage person.**

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

380 ~~(1)~~ (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer

381 Classifications, may investigate the possible violation of:

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

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

386 (A) a cigar;

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

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

389 (D) a nicotine product.

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

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

395 (i) alcohol; or

396 (ii) (A) a cigar;

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

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

399 (D) a nicotine product.

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

402 ~~[(2)]~~ (3) (a) If an individual under the age of 18 years old is requested to attempt a
403 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that
404 individual participating in any attempted purchase.

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

406 (i) be a trained volunteer; or

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

409 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and
410 anyone accompanying the individual attempting a purchase may not during the attempted
411 purchase misrepresent the age of the individual by false or misleading identification
412 documentation in attempting the purchase.

413 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant to
414 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted
415 purchase of, or possession of alcohol, a cigar, a cigarette, ~~[or]~~ tobacco in any form, or a
416 nicotine product if a peace officer directs, supervises, and monitors the individual.

417 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), a purchase attempted under
418 this section shall be conducted:

419 (i) on a random basis; and

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

421 than:

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

423 (I) a cigar;

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

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

426 (IV) a nicotine product; and

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

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

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

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

434 [(6)] (7) (a) The peace officer exercising direction, supervision, and monitoring of the
 435 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
 436 was made.

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

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

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

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

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

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

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

446 Section 11. **Coordinating H.B. 71 with H.B. 88 -- Technical amendments.**

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

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

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

453 (i) a cigarette;

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

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

456 (iv) tobacco; or

457 (v) a tobacco product.";

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

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

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

461 (i) a cigarette;

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

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

464 (iv) tobacco; or

465 (v) a tobacco product.";

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

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

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

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

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

471 (C) tobacco; or

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

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

474 "(1) As used in this section:

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

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

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

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

479 (c) "Correctional facility" means:

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

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

484 (iii) any juvenile detention facility; and

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

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

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

491 ~~[(e)]~~ (f) "Mental health facility" ~~[has the same meaning]~~ is as defined in Section
492 62A-15-602.

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

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

495 ~~[(g)]~~ (i) "Secure area" ~~[has the same meaning as provided]~~ is as defined in Section
496 76-8-311.1.";

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

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

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

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

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

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

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

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

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

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

522 "77-39-101. Investigation of sales of alcohol, tobacco, an electronic cigarette, or a
523 nicotine product to an underage person.

524 (1) As used in this section:

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

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

527 ~~(1)~~ (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
528 Classifications, may investigate the possible violation of:

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

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

533 (A) a cigar;

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

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

536 (D) an electronic cigarette; or

537 (E) a nicotine product.

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

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

543 (i) alcohol; or

544 (ii) (A) a cigar;

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

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

547 (D) an electronic cigarette; or

548 (E) a nicotine product.

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

551 ~~(2)~~ (3) (a) If an individual under the age of 18 years old is requested to attempt a
552 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that

553 individual participating in any attempted purchase.

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

555 (i) be a trained volunteer; or

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

558 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and anyone
559 accompanying the individual attempting a purchase may not during the attempted purchase
560 misrepresent the age of the individual by false or misleading identification documentation in
561 attempting the purchase.

562 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant to
563 this section is immune from prosecution, suit, or civil liability for the purchase of, attempted
564 purchase of, or possession of alcohol, a cigar, a cigarette, ~~[or]~~ tobacco in any form, an
565 electronic cigarette, or a nicotine product if a peace officer directs, supervises, and monitors the
566 individual.

567 [(5)] (6) (a) Except as provided in Subsection ~~[(5)]~~(6)(b), a purchase attempted under
568 this section shall be conducted:

569 (i) on a random basis; and

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

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

573 (I) a cigar;

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

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

576 (IV) an electronic cigarette; or

577 (V) a nicotine product; and

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

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

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

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

586 [~~6~~] (7) (a) The peace officer exercising direction, supervision, and monitoring of the
587 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
588 was made.

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

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

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

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

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

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

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