

**ELECTRONIC CIGARETTE RESTRICTIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ronda Rudd Menlove**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Uniform Driver License Act, provisions relating to the state system of public education, the Utah Criminal Code, and the Utah Code of Criminal Procedure to place restrictions on the provision, obtaining, and possession of an electronic cigarette and to enforce those 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 an electronic cigarette;
- ▶ 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 an electronic cigarette;
- ▶ prohibits an electronic cigarette in a correctional or a mental health facility and provides criminal penalties for violation of this prohibition;
- ▶ makes it a misdemeanor to provide an electronic cigarette to a person under 19 years of age;
- ▶ makes it a class C misdemeanor for an 18 year old person to buy, attempt to buy, accept, or possess an electronic cigarette;



28           ▶ provides that a person under the age of 18 who buys, attempts to buy, accepts, or  
29 has in the person's possession an electronic cigarette is subject to the jurisdiction of  
30 the Juvenile Court;

31           ▶ describes when the sale of an electronic cigarette is required to be face-to-face and  
32 provides criminal penalties for violation of those requirements;

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

35           ▶ describes when free distribution of an electronic cigarette is prohibited and provides  
36 criminal penalties for violation of those prohibitions; ~~§~~→ **and**

37 [~~→~~→ ~~addresses advertising requirements relating to electronic cigarettes; and~~] ←~~§~~

38           ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           None

43 **Utah Code Sections Affected:**

44 **AMENDS:**

45           **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197

46           **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197

47           **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161

48           **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382

49           **76-10-101**, as last amended by Laws of Utah 1998, Chapter 412

50           **76-10-104**, as last amended by Laws of Utah 2000, Chapter 176

51           **76-10-105**, as last amended by Laws of Utah 2002, Chapter 212

52           **76-10-105.1**, as last amended by Laws of Utah 2009, Chapters 307 and 341

53           **76-10-111**, as last amended by Laws of Utah 1990, Chapter 14

54 ~~§~~→ [~~76-10-112, as enacted by Laws of Utah 1989, Chapter 193~~] ←~~§~~

55           **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342



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

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

59 **53-3-229. Prohibited uses of license certificate -- Penalty.**

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

61 (a) lend or knowingly permit the use of a license certificate issued to the person, by a  
62 person not entitled to it;63 (b) display or to represent as the person's own a license certificate not issued to the  
64 person;65 (c) refuse to surrender to the division or a peace officer upon demand any license  
66 certificate issued by the division;67 (d) use a false name or give a false address in any application for a license or any  
68 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to  
69 knowingly conceal a material fact or otherwise commit a fraud in the application;70 (e) display a canceled, denied, revoked, suspended, or disqualified driver license  
71 certificate as a valid driver license certificate;72 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic  
73 driver license certificate issued by a governmental entity if the item is not an authentic driver  
74 license certificate issued by that governmental entity; or75 (g) alter any information on an authentic driver license certificate so that it no longer  
76 represents the information originally displayed.77 (2) The provisions of Subsection (1)(e) do not prohibit the use of a person's driver  
78 license certificate as a means of personal identification.79 (3) It is a class A misdemeanor to knowingly:80 (a) [~~knowingly~~] issue a driver license certificate with false or fraudulent information;81 (b) [~~knowingly~~] issue a driver license certificate to a person younger than 21 years of  
82 age if the driver license certificate is not distinguished as required for a person younger than 21  
83 years of age under Section 53-3-207; or84 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered driver license  
85 certificate to procure [~~cigarettes, tobacco, or tobacco products~~];86 (i) a cigarette;87 (ii) an electronic cigarette, as defined in Section 76-10-101;88 (iii) tobacco; or89 (iv) a tobacco product.

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

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

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

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

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

99 **53-3-810. Prohibited uses of identification card -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

121 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered identification card to  
122 procure [~~cigarettes, tobacco, or tobacco products.~~];

123 (i) a cigarette;

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

125 (iii) tobacco; or

126 (iv) a tobacco product.

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

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

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

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

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

136 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**  
137 **violations -- Limitation of liability.**

138 (1) The Legislature recognizes that:

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

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

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

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

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

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

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

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

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

163 (ii) illicit use, possession, or distribution of controlled substances or drug  
164 paraphernalia, and the use, possession, or distribution of an electronic cigarette as defined in  
165 Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

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

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

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

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

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

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

180 **76-8-311.3. Items prohibited in correctional and mental health facilities --**  
181 **Penalties.**

182 (1) As used in this section:

- 183 (a) "Contraband" means any item not specifically prohibited for possession by  
184 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.
- 185 (b) "Controlled substance" means any substance defined as a controlled substance  
186 under Title 58, Chapter 37, Utah Controlled Substances Act.
- 187 (c) "Correctional facility" means:
- 188 (i) any facility operated by or contracting with the Department of Corrections to house  
189 offenders in either a secure or nonsecure setting;
- 190 (ii) any facility operated by a municipality or a county to house or detain criminal  
191 offenders;
- 192 (iii) any juvenile detention facility; and
- 193 (iv) any building or grounds appurtenant to the facility or lands granted to the state,  
194 municipality, or county for use as a correctional facility.
- 195 (d) "Electronic cigarette" is as defined in Section 76-10-101.
- 196 ~~[(d)]~~ (e) "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)]~~ (f) "Mental health facility" ~~[has the same meaning]~~ is as defined in Section  
200 62A-15-602.
- 201 ~~[(f)]~~ (g) "Offender" means a person in custody at a correctional facility.
- 202 ~~[(g)]~~ (h) "Secure area" ~~[has the same meaning as provided]~~ is as defined in Section  
203 76-8-311.1.
- 204 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may  
205 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,  
206 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any  
207 quantity may be:
- 208 (a) transported to or upon a correctional or mental health facility;
- 209 (b) sold or given away at any correctional or mental health facility;
- 210 (c) given to or used by any offender at a correctional or mental health facility; or
- 211 (d) knowingly or intentionally possessed at a correctional or mental health facility.
- 212 (3) It is a defense to any prosecution under this section if the accused in committing the  
213 act made criminal by this section with respect to:

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

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

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

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

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

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

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

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

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

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

240 (i) spirituous or fermented liquor;

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

242 (iii) poison in any quantity.

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



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

246 (i) spirituous or fermented liquor;

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

248 (iii) poison in any quantity.

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

252 (i) spirituous or fermented liquor;

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

255 (iii) poison in any quantity.

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

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

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

265 (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic  
266 cigarette in violation of this section to an offender or on the grounds of any correctional  
267 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 electronic cigarette 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 electronic cigarette to offenders is a class A misdemeanor.

287 Section 5. Section **76-10-101** is amended to read:

288 **76-10-101. Definitions.**

289 As used in this part:

290 ~~[(1) "Place of business" means any and all places such as shops, stores, factories,~~  
291 ~~public garages, offices, theaters, recreation and dance halls, poolrooms, cafes, cafeterias,~~  
292 ~~cabarets, restaurants, hotels, lodging houses, streetcars, buses, interurban and railway passenger~~  
293 ~~coaches and waiting rooms.]~~

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

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

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

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

304 (3) "Electronic cigarette" means any device, other than a cigarette or cigar, intended to  
305 deliver vapor containing nicotine into a person's respiratory system.

306 (4) "Place of business" includes:

- 307           (a) a shop;
- 308           (b) a store;
- 309           (c) a factory;
- 310           (d) a public garage;
- 311           (e) an office;
- 312           (f) a theater;
- 313           (g) a recreation hall;
- 314           (h) a dance hall;
- 315           (i) a poolroom;
- 316           (j) a café;
- 317           (k) a cafeteria;
- 318           (l) a cabaret;
- 319           (m) a restaurant;
- 320           (n) a hotel;
- 321           (o) a lodging house;
- 322           (p) a streetcar;
- 323           (q) a bus;
- 324           (r) an interurban or railway passenger coach;
- 325           (s) a waiting room; and
- 326           (t) any other place of business.

327           ~~[(2)]~~ (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other  
328 lighted smoking equipment.

329           Section 6. Section **76-10-104** is amended to read:

330           **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**

331 **-- Penalties.**

332           (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence  
333 provides any cigar, cigarette, electronic cigarette, or tobacco in any form, to any person under  
334 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor  
335 on the second offense, and a class A misdemeanor on subsequent offenses.

336           (2) For purposes of this section "provides":

337           (a) includes selling, giving, furnishing, sending, or causing to be sent; and

338 (b) does not include the acts of the United States Postal Service or other common  
339 carrier when engaged in the business of transporting and delivering packages for others or the  
340 acts of a person, whether compensated or not, who transports or delivers a package for another  
341 person without any reason to know of the package's content.

342 Section 7. Section 76-10-105 is amended to read:

343 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**  
344 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

345 (1) Any 18 year old person who buys or attempts to buy, accepts, or has in [his] the  
346 person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of  
347 a class C misdemeanor and subject to:

348 (a) a minimum fine or penalty of \$60; and

349 (b) participation in a court-approved tobacco education program, which may include a  
350 participation fee.

351 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in [his]  
352 the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is  
353 subject to the jurisdiction of the Juvenile Court and:

354 (a) a minimum fine or penalty of \$60; and

355 (b) participation in a court-approved tobacco education program, which may include a  
356 participation fee.

357 (3) A compliance officer appointed by a board of education under Section 53A-3-402  
358 may issue citations for violations of this section committed on school property. Cited  
359 violations shall be reported to the appropriate juvenile court.

360 Section 8. Section 76-10-105.1 is amended to read:

361 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**  
362 **electronic cigarettes -- Supremacy clause -- Penalties.**

363 (1) As used in this section:

364 [~~(a) "Cigarette" means a product which contains nicotine, is intended to be burned~~  
365 ~~under ordinary conditions of use, and consists of:]~~

366 [~~(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;~~  
367 ~~or]~~

368 [~~(ii) any roll of tobacco wrapped in any substance containing tobacco which, because~~

369 of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely  
370 to be offered to, or purchased by, consumers as a cigarette described in Subsection (1)(a).]

371 ~~[(b) "Cigar" means a product which contains nicotine, is intended to be burned under~~  
372 ~~ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in~~  
373 ~~any substance containing tobacco, other than any roll of tobacco which is a cigarette within the~~  
374 ~~meaning of Subsection (1)(a).]~~

375 ~~[(e)]~~ (a) "Cigarette tobacco" means a product that consists of loose tobacco that  
376 contains or delivers nicotine and is intended for use by a consumer in a cigarette.

377 ~~[(f)]~~ (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or  
378 delivers nicotine and is intended to be smoked by a consumer in a pipe.

379 ~~[(e)]~~ (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,  
380 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption  
381 or who operates a facility where a vending machine or a self-service display is permitted under  
382 Subsection (3)(b).

383 ~~[(f)]~~ (d) "Self-service display" means a display of cigarettes, electronic cigarettes,  
384 cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has  
385 access without the intervention of a retail employee.

386 ~~[(g)]~~ (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered,  
387 or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

388 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic  
389 cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct,  
390 face-to-face exchange between:

391 (i) an employee of the retailer; and  
392 (ii) the purchaser.

393 (b) Examples of methods that are not permitted include vending machines and  
394 self-service displays.

395 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets  
396 containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless  
397 tobacco if the locked cabinets are accessible only to the retailer or the retailer's employees.

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

399 (a) mail-order sales, if the provisions of Section 59-14-509 are met;

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

405 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from  
406 tobacco and tobacco related products and where the retailer ensures that no person younger  
407 than 19 years of age is present, or permitted to enter at any time, unless accompanied by a  
408 parent or legal guardian.

409 (4) Any ordinance, regulation, or rule adopted by the governing body of a political  
410 subdivision of the state or by a state agency that affects the sale, placement, or display of  
411 cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco  
412 that is not essentially identical to the provisions of this section and Section 76-10-102 is  
413 superseded.

414 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of  
415 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection  
416 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a  
417 cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as  
418 provided for in Section 76-10-104 and the penalties provided for in that section.

419 (b) Nothing in this section may be construed as permitting a person to provide tobacco  
420 to a minor in violation of Section 76-10-104.

421 (6) Violation of Subsection (2) or (3) is a:

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

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

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

425 Section 9. Section **76-10-111** is amended to read:

426 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**  
427 **electronic cigarettes -- Exceptions.**

428 (1) The Legislature finds that;

429 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who  
430 use those products because research indicates that they may cause mouth or oral cancers; [~~that~~]

431 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;  
 432 [~~and that~~]

433 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of  
 434 tobacco products; and

435 (d) it is necessary to restrict the gift of [~~these~~] the products described in this Subsection  
 436 (1) in the interest of the health of the citizens of this state.

437 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,  
 438 and retailer to give or distribute without charge any smokeless tobacco [~~or~~], chewing tobacco,  
 439 or electronic cigarette in this state. Any person who violates this section is guilty of a class C  
 440 misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent  
 441 offense.

442 (3) (a) Smokeless tobacco [~~or~~], chewing tobacco, or an electronic cigarette may be  
 443 distributed to adults without charge at professional conventions where the general public is  
 444 excluded.

445 (b) Subsection (2) does not apply to [~~retailers, manufacturers, or distributors who give~~  
 446 ~~smokeless tobacco or chewing tobacco to persons of legal age upon their purchase of other~~  
 447 ~~tobacco products:] a retailer, manufacturer, or distributor who gives smokeless tobacco,  
 448 chewing tobacco, or an electronic cigarette to a person of legal age upon the person's purchase  
 449 of another tobacco product or electronic cigarette.~~

450 **§→ Section 10. Section 76-10-112 is amended to read:**

451 ~~———— 76-10-112. Prohibition of distribution of electronic cigarettes, cigarettes, or other~~  
 452 ~~tobacco products -- Exceptions:~~

453 ~~———— (1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler,~~  
 454 ~~or retailer to give or distribute electronic cigarettes, cigarettes, or other tobacco products in~~  
 454a ~~this~~

455 ~~state without charge. Any person who violates this subsection is guilty of a class C~~  
 456 ~~misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.~~

457 ~~———— (2) [Cigarettes] Electronic cigarettes, cigarettes, and other tobacco products may be~~  
 458 ~~distributed to adults without charge at professional conventions where the general public is~~  
 459 ~~excluded.~~

460 ~~———— (3) The prohibition described in Subsection (1) does not apply to [retailers,~~  
 461 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of~~  
 461a ~~legal ←§~~

462 ~~§→ age upon their purchase of cigarettes or other tobacco products.] a retailer, manufacturer, or~~  
 463 ~~distributor who gives electronic cigarettes, cigarettes, or other tobacco products to a person of~~  
 464 ~~legal age upon the person's purchase of an electronic cigarette, cigarettes, or another tobacco~~  
 465 ~~product. ←§~~

466 Section ~~§→~~ [H] 10 ←§ . Section 77-39-101 is amended to read:

467 **77-39-101. Investigation of sales of alcohol and tobacco to under age persons.**

468 (1) As used in this section, "electronic cigarette" is as defined in Section 76-10-101.

469 [(H)] (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer

470 Classifications, may investigate the possible violation of:

471 (i) Section 32A-12-203 by requesting an individual under the age of 21 years to enter

472 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

473 (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter

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

475 (A) a cigar;

476 (B) a cigarette; [or]

477 (C) tobacco in any form[:]; or

478 (D) an electronic cigarette.

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

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

481 (c) Immediately following a purchase or attempted purchase or as soon as practical the

482 supervising peace officer shall inform the cashier and the proprietor or manager of the retail

483 establishment that the attempted purchaser was under the legal age to purchase:

484 (i) alcohol; or

485 (ii) (A) a cigar;

486 (B) a cigarette; [or]

487 (C) tobacco in any form[:]; or

488 (D) an electronic cigarette.

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

490 purchase.

491 [(2)] (3) (a) If an individual under the age of 18 years old is requested to attempt a

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



493 individual participating in any attempted purchase.

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

495 (i) be a trained volunteer; or

496 (ii) receive payment, but may not be paid based on the number of successful purchases

497 of alcohol ~~[or]~~, tobacco, or an electronic cigarette.

498 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and

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

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

501 documentation in attempting the purchase.

502 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant to

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

504 purchase of, or possession of alcohol, a cigar, a cigarette, ~~[or]~~ tobacco in any form, or an

505 electronic cigarette if a peace officer directs, supervises, and monitors the individual.

506 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), a purchase attempted under

507 this section shall be conducted:

508 (i) on a random basis; and

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

510 than:

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

512 (I) a cigar;

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

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

515 (IV) an electronic cigarette; and

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

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

518 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a

519 cigar, a cigarette, ~~[or]~~ tobacco in any form, or an electronic cigarette to an individual under the

520 age established by Section 32A-12-203 or 76-10-104; and

521 (ii) the supervising peace officer makes a written record of the grounds for the

522 reasonable suspicion.

523 ~~[(6)]~~ (7) (a) The peace officer exercising direction, supervision, and monitoring of the

524 attempted purchase shall make a report of the attempted purchase, whether or not a purchase  
525 was made.

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 12-30-09 1:47 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 88 - Electronic Cigarette Restrictions**

**Revised  
Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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 governments may incur costs related to misdemeanors created in this legislation.

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