

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 498

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES; AMENDING SEC-  
2 TION 39-5701, IDAHO CODE, TO REVISE LEGISLATIVE FINDINGS AND INTENT;  
3 AMENDING SECTION 39-5702, IDAHO CODE, TO REVISE DEFINITIONS AND TO RE-  
4 MOVE A DEFINITION; AMENDING SECTION 39-5703, IDAHO CODE, TO REVISE TER-  
5 MINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5704,  
6 IDAHO CODE, TO REVISE TERMINOLOGY, TO REQUIRE RULEMAKING, TO PROVIDE  
7 FOR RULEMAKING REGARDING CERTAIN FEES ON OR AFTER A CERTAIN DATE, AND  
8 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5705, IDAHO CODE,  
9 TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
10 TION 39-5706, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROHIBIT CERTAIN  
11 SALES OR DISTRIBUTION ON AND AFTER A CERTAIN DATE, AND TO MAKE TECHNICAL  
12 CORRECTIONS; AMENDING SECTION 39-5707, IDAHO CODE, TO REVISE TERMI-  
13 NOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5708,  
14 IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS;  
15 AMENDING SECTION 39-5709, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE  
16 A TECHNICAL CORRECTION; AMENDING SECTION 39-5710, IDAHO CODE, TO RE-  
17 VISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
18 39-5711, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL COR-  
19 RECTIONS; AMENDING SECTION 39-5713, IDAHO CODE, TO REVISE TERMINOLOGY  
20 AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5714, IDAHO  
21 CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMEND-  
22 ING SECTION 39-5715, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR  
23 CERTAIN VERIFICATION TECHNOLOGY, AND TO MAKE A TECHNICAL CORRECTION;  
24 AMENDING SECTION 39-5717, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE  
25 A CORRECT CODE REFERENCE, AND TO MAKE TECHNICAL CORRECTIONS; REPEALING  
26 SECTION 39-5717A, IDAHO CODE, RELATING TO SHIPPING REQUIREMENTS FOR  
27 ELECTRONIC CIGARETTES; AMENDING SECTION 39-5718, IDAHO CODE, TO REVISE  
28 TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING THE HEADING  
29 FOR CHAPTER 57, TITLE 39, IDAHO CODE; AMENDING SECTION 39-8421, IDAHO  
30 CODE, TO REVISE DEFINITIONS; AMENDING SECTION 39-8423, IDAHO CODE, TO  
31 REMOVE A REFERENCE TO A CERTAIN ACT AND TO MAKE TECHNICAL CORRECTIONS;  
32 AMENDING SECTION 39-8424, IDAHO CODE, TO REVISE TERMINOLOGY, TO PRO-  
33 VIDE A CORRECT CODE REFERENCE, AND TO MAKE A TECHNICAL CORRECTION; AND  
34 AMENDING SECTION 56-227F, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE  
35 TECHNICAL CORRECTIONS.  
36

37 Be It Enacted by the Legislature of the State of Idaho:

38 SECTION 1. That Section 39-5701, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 39-5701. LEGISLATIVE FINDINGS AND INTENT. The prevention of youth ac-  
41 cess to tobacco products and electronic smoking devices within the state of  
42 Idaho is hereby declared to be a state goal to promote the general health

1 and welfare of Idaho's young people. ~~Twenty-seven percent (27%) of Idaho's~~  
 2 ~~youth currently smoke and almost twenty-seven percent (27%) of boys in Idaho~~  
 3 ~~use chewing tobacco which is significantly higher than the national average.~~

4 ~~Tobacco is the number one killer in Idaho causing more deaths by far~~  
 5 ~~than alcohol, illegal drugs, car crashes, homicides, suicides, fires and~~  
 6 ~~AIDS combined. According to the center for disease control and prevention~~  
 7 ~~(CDC), twenty-four thousand three hundred ninety-four (24,394) children in~~  
 8 ~~Idaho currently under eighteen (18) years of age will die prematurely from~~  
 9 ~~tobacco-related disease. Tobacco costs the state over two hundred forty~~  
 10 ~~million dollars (\$240,000,000) each year and is the single most preventable~~  
 11 ~~cause of death and disability in Idaho.~~

12 ~~Furthermore, tobacco is usually the first drug used by young people who~~  
 13 ~~go on to use alcohol and other illegal drugs. A study from the CDC shows that~~  
 14 ~~teens who smoke are three (3) times more likely than nonsmokers to use alco-~~  
 15 ~~hol, eight (8) times more likely to use marijuana, and twenty-two (22) times~~  
 16 ~~more likely to use cocaine.~~

17 ~~Most minors buy their own tobacco products or steal from self-service~~  
 18 ~~displays. Additionally, vending machines also create easy access for mi-~~  
 19 ~~norers and a report from the CDC shows that even when vending machines are re-~~  
 20 ~~stricted to "adult areas" such as bars, children still succeed in purchasing~~  
 21 ~~cigarettes from vending machines.~~

22 ~~Tobacco use is the leading cause of preventable death in Idaho, and~~  
 23 ~~nicotine is a highly addictive, potentially harmful substance. Both present~~  
 24 ~~an urgent public health challenge. New and emerging tobacco products and~~  
 25 ~~electronic nicotine delivery devices like electronic cigarettes are linked~~  
 26 ~~to an increase in youth use of tobacco and nicotine products, are connected~~  
 27 ~~to the use of traditional tobacco products like cigarettes, and are as-~~  
 28 ~~sociated with increased addiction in youth users. Therefore, it is this~~  
 29 ~~state's policy to prevent the illegal sale, theft, and easy access of tobacco~~  
 30 ~~products and electronic smoking devices to minors, and to prohibit the pos-~~  
 31 ~~session, distribution, and use of tobacco products and electronic smoking~~  
 32 ~~devices by minors, and to punish those who disregard this law otherwise dis-~~  
 33 ~~courage and prevent the possession, use, and trafficking in tobacco products~~  
 34 ~~and electronic smoking devices by minors.~~

35 SECTION 2. That Section 39-5702, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 39-5702. DEFINITIONS. The terms used in this chapter are defined as  
 38 follows:

39 (1) "Business" means any company, partnership, firm, sole proprietor-  
 40 ship, association, corporation, organization, or other legal entity, or a  
 41 representative of the foregoing entities.

42 (2) "Delivery sale" means to distribute tobacco products or electronic  
 43 ~~cigarettes~~ smoking devices to a consumer in a state where either:

44 (a) ~~‡~~The individual submits the order for such sale by means of a  
 45 telephonic or other method of voice transmission, data transfer via  
 46 computer networks, including the internet and other online services, or  
 47 facsimile, or the mails; or

48 (b) ~~‡~~The tobacco products or electronic ~~cigarettes~~ smoking devices are  
 49 delivered by use of the mails or a delivery service.

1 (3) "Delivery service" means any person who is engaged in the commer-  
2 cial delivery of letters, packages or other containers.

3 (4) "Department" means the state department of health and welfare or  
4 its duly authorized representative.

5 (5) "Distribute" means to give, deliver, sell, offer to give, offer to  
6 deliver, offer to sell or cause any person to do the same or hire any person to  
7 do the same.

8 (6) ~~"Electronic cigarette" means any device that can provide an inhaled  
9 dose of nicotine by delivering a vaporized solution. "Electronic cigarette"  
10 includes the components of an electronic cigarette including, but not lim-  
11 ited to, liquid nicotine.~~

12 ~~(7) "Minor" means a person under eighteen (18) years of age.~~

13 (87) "Minor exempt permit" means a permittee location whose revenues  
14 from the sale of alcoholic beverages for on-site consumption comprises at  
15 least fifty-five percent (55%) of total revenues, or whose products and ser-  
16 vices are primarily obscene, pornographic, profane, or sexually oriented,  
17 is exempt from inspections assisted by a minor, if minors are not allowed in  
18 the location and such prohibition is posted clearly on all entrance doors.

19 (98) "Permit" means a permit issued by the department for the sale or  
20 distribution of tobacco products or electronic smoking devices.

21 (109) "Permittee" means the holder of a valid permit for the sale or dis-  
22 tribution of tobacco products or electronic smoking devices.

23 (110) "Photographic identification" means state, district, terri-  
24 torial, possession, provincial, national or other equivalent government  
25 driver's license, identification card or military card, in all cases bearing  
26 a photograph and a date of birth, or a valid passport.

27 (121) "Random unannounced inspection" means an inspection of retail  
28 outlets by a law enforcement agency or by the department, with or without the  
29 assistance of a minor, to monitor compliance of this chapter.

30 (132) "Seller" means the person who physically sells or distributes to-  
31 bacco products or electronic cigarettes smoking devices.

32 (143) (a) "Tobacco product or electronic smoking device" means:

33 (i) Any substance that contains containing, made of, or derived  
34 from tobacco or nicotine that is intended for human consumption or  
35 is likely to be consumed, whether inhaled, absorbed, or ingested  
36 by any other means, including, but not limited to, cigarettes,  
37 cigars, pipes, snuff, smoking or chewing tobacco, snus, tobacco  
38 papers, or smokeless tobacco;

39 (ii) Any electronic smoking device that may be used to deliver an  
40 aerosolized or a vaporized substance to the person inhaling from  
41 the device, including but not limited to an electronic cigarette,  
42 an electronic cigar, an electronic pipe, a vape pen, or an elec-  
43 tronic hookah, or any component, part, or accessory of such a  
44 device, or any substance intended to be aerosolized or vaporized  
45 during use of the device, whether or not the substance contains  
46 nicotine, or any heated or lighted device intended to be used for  
47 inhalation; or

48 (iii) Any components, parts, or accessories of a tobacco product  
49 or an electronic smoking device, whether or not they contain to-  
50 bacco or nicotine, including but not limited to filters, rolling

1            papers, blunt or hemp wraps, and pipes, whether manufactured,  
 2            distributed, marketed, or sold as an electronic cigarette, elec-  
 3            tronic cigar, electronic hookah, or vape pen, or under any other  
 4            product name or descriptor.

5            (b) The term "tobacco product or electronic smoking device" does not  
 6            include drugs, devices, or combinations of products authorized for sale  
 7            by the United States food and drug administration as those terms are de-  
 8            defined in the federal food, drug, and cosmetic act.

9            (154) "Vending machine" means any mechanical, electronic, or other  
 10           similar device which, upon the insertion of tokens, money or any other form  
 11           of payment, dispenses tobacco products or electronic ~~cigarettes~~ smoking  
 12           devices.

13           (165) "Vendor-assisted sales" means any sale or distribution in which  
 14           the customer has no access to the product except through the assistance of  
 15           the seller.

16           (176) "Without a permit" means a business that has failed to obtain a  
 17           permit or a business whose permit is suspended or revoked.

18           SECTION 3. That Section 39-5703, Idaho Code, be, and the same is hereby  
 19           amended to read as follows:

20           39-5703. POSSESSION, DISTRIBUTION, OR USE BY A MINOR. (1) It shall be  
 21           unlawful for a minor to possess, receive, purchase, use, or consume tobacco  
 22           products or electronic ~~cigarettes~~ smoking devices or to attempt any of the  
 23           foregoing.

24           (2) It shall be unlawful for a minor to sell or distribute tobacco prod-  
 25           ucts or electronic ~~cigarettes~~ smoking devices or to attempt either of the  
 26           foregoing.

27           (3) It shall be unlawful for a minor to provide false identification, or  
 28           make any false statement regarding their age in an attempt to obtain tobacco  
 29           products or electronic ~~cigarettes~~ smoking devices.

30           (4) A minor who is assisting with a random unannounced inspection in ac-  
 31           cordance with this chapter shall not be in violation of this chapter.

32           (5) A minor may possess but not sell or distribute tobacco products or  
 33           electronic ~~cigarettes~~ smoking devices in the course of employment, for du-  
 34           ties such as stocking shelves or carrying purchases to customers' vehicles.

35           (6) Penalties for violations by a minor. A violation of subsection (1)  
 36           of this section by a minor shall constitute an infraction and shall be pun-  
 37           ishable by a fine of seventeen dollars and fifty cents (\$17.50). The first  
 38           violation of subsection (2) or (3) of this section by a minor shall consti-  
 39           tute an infraction and shall be punishable by a fine of two hundred dollars  
 40           (\$200). A subsequent violation of subsection (2) or (3) of this section by a  
 41           minor shall constitute a misdemeanor and shall be punishable by imprisonment  
 42           in an appropriate facility not exceeding thirty (30) days, a fine not exceed-  
 43           ing three hundred dollars (\$300), or both such fine and imprisonment. The  
 44           court may, in addition to the penalties provided ~~herein~~ in this section, re-  
 45           quire the minor and the minor's parents or legal guardian to attend tobacco  
 46           product or electronic smoking device awareness programs or to perform com-  
 47           munity service in programs related to tobacco product or electronic smoking  
 48           device awareness.

1 SECTION 4. That Section 39-5704, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 39-5704. PERMITTING OF TOBACCO PRODUCTS OR ELECTRONIC SMOKING  
4 DEVICES RETAILERS. (1) It shall be unlawful to sell or distribute or offer  
5 tobacco products or electronic smoking devices for sale or distribution at  
6 retail or to possess tobacco products or electronic smoking devices with  
7 the intention of selling at retail without having first obtained a tobacco  
8 product or electronic smoking device permit from the department, which shall  
9 be the only retail tobacco product or electronic smoking device permit or  
10 license required. Provided however, this section shall not be deemed to  
11 require a wholesaler or manufacturer's representative or ~~their~~ employees  
12 who, in the course of their employment, stock shelves and replenish tobacco  
13 products or electronic smoking devices at a permittee's place of business to  
14 obtain a permit.

15 (2) The department shall administer the permitting of tobacco product  
16 or electronic smoking device retailers and shall be authorized to ensure  
17 compliance with this chapter. The department ~~may~~ shall promulgate rules in  
18 compliance with chapter 52, title 67, Idaho Code, regarding permitting of  
19 tobacco product or electronic smoking device retailers, inspections, and  
20 compliance checks, effective training, and employment practices under this  
21 chapter. On or after July 1, 2021, the department shall promulgate rules  
22 setting permit fees no greater than needed to cover the cost of inspections  
23 and other responsibilities imposed on the department by this chapter.

24 (3) Permits shall be issued annually ~~for no charge~~ for each business lo-  
25 cation to ensure compliance with the requirements of this chapter. A copy of  
26 this chapter, rules adopted by the department, appropriate signage required  
27 by this chapter, and any materials deemed necessary shall be provided with  
28 each permit issued.

29 (4) A separate permit must be obtained for each place of business and is  
30 nontransferable to another person, business, or location.

31 (5) Permittees may display the permit in a prominent location.

32 (6) A permittee may display a sign in each location within a place of  
33 business where tobacco products or electronic smoking devices are sold or  
34 distributed. A sign may be clearly visible to the customer and the seller  
35 and shall state: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS OR ELEC-  
36 TRONIC SMOKING DEVICES TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS. PROOF  
37 OF AGE REQUIRED. ANYONE WHO SELLS OR DISTRIBUTES TOBACCO PRODUCTS OR ELEC-  
38 TRONIC SMOKING DEVICES TO A MINOR IS SUBJECT TO STRICT FINES AND PENALTIES.  
39 MINORS ARE SUBJECT TO FINES AND PENALTIES."

40 (7) Permittees are responsible to educate employees as to the require-  
41 ments of this chapter.

42 (8) It shall be unlawful for the permittee to allow employees who are  
43 minors to sell or distribute tobacco products or electronic smoking devices.  
44 Exception: Employees who are minors may possess but not sell or distribute  
45 tobacco products or electronic smoking devices in the course of employment,  
46 for such duties as stocking shelves or carrying purchases to customers' ve-  
47 hicles.

48 SECTION 5. That Section 39-5705, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

1           39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS ~~AND OR~~ ELECTRONIC  
2 CIGARETTES SMOKING DEVICES TO A MINOR. (1) It shall be unlawful to sell, dis-  
3 tribute, or offer tobacco products or electronic ~~cigarettes~~ smoking devices  
4 to a minor.

5           (2) It shall be an affirmative defense that the seller of a tobacco  
6 product or an electronic ~~cigarette~~ smoking device to a minor in violation  
7 of this section had requested, examined, and reasonably relied upon a pho-  
8 tographic identification from such person establishing that the person's  
9 ~~age as is~~ at least eighteen (18) years of age prior to selling such person a  
10 tobacco product or an electronic ~~cigarette~~ smoking device. The failure of  
11 a seller to request and examine photographic identification from a person  
12 under eighteen (18) years of age prior to the sale of a tobacco product or  
13 an electronic ~~cigarette~~ smoking device to such person shall be construed  
14 against the seller and form a conclusive basis for the seller's violation of  
15 this section.

16           SECTION 6. That Section 39-5706, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18           39-5706. ~~VENDOR-ASSISTED SALES.~~ (1) It shall be unlawful to sell or  
19 distribute tobacco products or electronic ~~cigarettes~~ smoking devices by any  
20 means other than vendor-assisted sales where the customer has no access to  
21 the product except through the assistance of the seller.

22           (2) On and after January 1, 20~~0~~20, it shall be unlawful to sell or dis-  
23 tribute tobacco products or electronic smoking devices from a vending ma-  
24 chines or self-service displays.

25           ~~(3) On and after January 1, 2013, it shall be unlawful to sell or dis-~~  
26 ~~tribute electronic cigarettes from a vending machine.~~

27           ~~(4) It shall be unlawful to sell or distribute tobacco products or elec-~~  
28 ~~tronic cigarettes from self-service displays.~~

29           (5) Stores with tobacco products or electronic smoking devices com-  
30 prising at least seventy-five percent (75%) of total merchandise are exempt  
31 from requiring vendor-assisted sales, if minors are not allowed in the store  
32 and such prohibition is posted clearly on all entrance doors.

33           SECTION 7. That Section 39-5707, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35           39-5707. OPENED PACKAGES AND SAMPLES. (1) It shall be unlawful to sell  
36 or distribute tobacco products or electronic smoking devices for commercial  
37 purposes other than in the federally required sealed package provided by the  
38 manufacturer with all the required warning labels and health warnings.

39           (2) It shall be unlawful to sell or distribute tobacco products or elec-  
40 tronic smoking devices for free or below the cost of such products to the  
41 sellers or distributors of the products for commercial or promotional pur-  
42 poses, to members of the general public in public places or at public events.

43           SECTION 8. That Section 39-5708, Idaho Code, be, and the same is hereby  
44 amended to read as follows:

1 39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT ~~--- CIVIL PENALTY FOR~~  
2 ~~VIOLATIONS RELATING TO ELECTRONIC CIGARETTES.~~ (1) Any permittee who fails to  
3 comply with any part of this chapter, or any current state or local law or  
4 rule or regulation regarding the sale or distribution of tobacco products or  
5 electronic smoking devices shall be subject to a civil penalty as provided in  
6 this section or have their permit suspended, pursuant to compliance with the  
7 contested case provisions of the Idaho administrative procedure act, chap-  
8 ter 52, title 67, Idaho Code, or both.

9 (2) If a seller who is not a permittee violates section 39-5705, Idaho  
10 Code, and sells or distributes tobacco products or electronic cigarettes  
11 smoking devices to a minor, then the seller shall be fined one hundred dol-  
12 lars (\$100).

13 (3) In the case of a first violation, the permittee shall be notified in  
14 writing of penalties to be levied for further violations.

15 (4) In the case of a second violation, the permittee shall be fined two  
16 hundred dollars (\$200) and shall be notified in writing of penalties to be  
17 levied for further violations. For a violation of section 39-5705, Idaho  
18 Code, the permittee shall not be fined if the permittee can show that a train-  
19 ing program was in place for the employee and that the permittee has a form  
20 signed by that employee on file stating that ~~they~~ the employee understands  
21 the tobacco product or electronic smoking device laws dealing with minors  
22 and the unlawful purchase of tobacco products or electronic smoking devices,  
23 but the permittee shall be notified in writing of penalties to be levied for  
24 any further violations. If no such training is in place, the permittee shall  
25 be fined two hundred dollars (\$200).

26 (5) In the case of a third violation in a two (2) year period, the  
27 permittee shall be fined two hundred dollars (\$200) and the permit may be  
28 suspended for up to seven (7) days. If the violation is by an employee, at the  
29 same location, who was involved in any previous citation for violation, the  
30 permittee shall be fined four hundred dollars (\$400). Effective training  
31 and employment practices by the permittee, as determined by the department,  
32 shall be a mitigating factor in determining permit suspension. Tobacco  
33 product or electronic smoking device retailers must remove all tobacco prod-  
34 ucts or electronic smoking devices from all areas accessible to or visible to  
35 the public while the permit is suspended.

36 (6) In the case of four (4) or more violations within a two (2) year pe-  
37 riod, the permittee shall be fined four hundred dollars (\$400) and the permit  
38 shall be revoked until such time that the permittee demonstrates an effec-  
39 tive training plan to the department, but in no case shall the revocation be  
40 for less than thirty (30) days. Tobacco product or electronic smoking de-  
41 vice retailers must remove all tobacco products or electronic smoking de-  
42 vices from all areas accessible to or visible to the public while the permit  
43 is revoked.

44 (7) All moneys collected for violations pursuant to this section shall  
45 be remitted to the prevention of minors' access to tobacco products or elec-  
46 tronic smoking devices fund created in section 39-5711, Idaho Code.

47 SECTION 9. That Section 39-5709, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1           39-5709. CRIMINAL PENALTIES FOR VIOLATIONS WITHOUT A PERMIT. Sale or  
2 distribution of tobacco products or electronic smoking devices, or any vio-  
3 lation of this chapter, without a permit is considered by the state of Idaho  
4 as an effort to subvert the state's public purpose to prevent minor's access  
5 to tobacco products or electronic smoking devices.

6           (1) The sale or distribution of tobacco products or electronic smoking  
7 devices without a permit shall constitute a misdemeanor punishable by im-  
8 prisonment not exceeding six (6) months in the county jail, a fine of three  
9 hundred dollars (\$300), or by both such fine and imprisonment. If the sale  
10 or distribution of tobacco products or electronic smoking devices was to a  
11 minor, the fine shall be no less than five hundred dollars (\$500) nor more  
12 than one thousand dollars (\$1,000). The provisions of this section shall  
13 not be applicable to an employee of the business engaged in the sale of to-  
14 bacco products or electronic smoking devices if the sale occurred during the  
15 course of such employment and the seller does not have an ownership interest  
16 in the business.

17           (2) In addition to the penalties set forth in subsection (1) of this  
18 section, the court may impose an additional fine of one thousand dollars  
19 (\$1,000) per day beginning the day following the date of citation as long  
20 as the illegal tobacco products or electronic smoking devices sales or dis-  
21 tribution continues. The first seven (7) days of additional fines may be  
22 suspended, provided that the business or seller is able to prove that the  
23 business or seller has applied for the permit within seven (7) days of the  
24 citation.

25           SECTION 10. That Section 39-5710, Idaho Code, be, and the same is hereby  
26 amended to read as follows:

27           39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the  
28 legislature that law enforcement agencies, the attorney general, and the de-  
29 partment shall enforce this chapter and rules promulgated pursuant thereto  
30 in a manner that can reasonably be expected to significantly reduce the ex-  
31 tent to which tobacco products and electronic ~~cigarettes~~ smoking devices are  
32 sold or distributed to minors.

33           (2) Law enforcement agencies may conduct random, unannounced inspec-  
34 tions at locations where tobacco products or electronic ~~cigarettes~~ smoking  
35 devices are sold or distributed to ensure compliance with this chapter. A  
36 copy of all citations issued under this chapter shall be submitted to the de-  
37 partment.

38           (3) The department shall conduct at least one (1) random, unannounced  
39 inspection per year at all locations where tobacco products or electronic  
40 smoking devices are sold or distributed at retail to ensure compliance with  
41 this chapter. The department shall conduct inspections for minor exempt  
42 permittees without the assistance of a minor. The department shall conduct  
43 inspections for all other permittees with the assistance of a minor. Each  
44 year, the department shall conduct random unannounced inspections equal to  
45 the number of permittees multiplied by the violation percentage rate re-  
46 ported for the previous year multiplied by a factor of ten (10). Local law  
47 enforcement agencies are encouraged to contract with the department to per-  
48 form these required inspections.



1 (4) Minors may assist with random, unannounced inspections with the  
 2 written consent of a parent or legal guardian. When assisting with these in-  
 3 spections, minors shall not provide false identification, nor make any false  
 4 statement regarding their age.

5 (5) Citizens may file a written complaint of noncompliance of this  
 6 chapter with the department, or with a law enforcement agency. Permit hold-  
 7 ers under 26 U.S.C. ~~section~~ 5712, may file written complaints relating to  
 8 delivery sales to the department or the attorney general's offices. Com-  
 9 plaints shall be investigated and the proper enforcement actions taken.

10 (6) Within a reasonable time, not later than two (2) business days after  
 11 an inspection has occurred, a representative of the business inspected shall  
 12 be informed in writing of the results of the inspection.

13 (7) The attorney general or his designee, or any person who holds a per-  
 14 mit under 26 U.S.C. ~~section~~ 5712, may bring an action in district court in  
 15 Idaho to prevent or restrain violations of this chapter by any person or by  
 16 any person controlling such person.

17 SECTION 11. That Section 39-5711, Idaho Code, be, and the same is hereby  
 18 amended to read as follows:

19 39-5711. FUNDING AND CREATION OF PREVENTION OF MINORS' ACCESS TO TO-  
 20 BACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES FUND. There is hereby created  
 21 the prevention of minors' access to tobacco products or electronic smoking  
 22 devices fund in the state treasury. Moneys in the fund shall be used to fund  
 23 the administration, inspections and enforcement of this chapter. Moneys in  
 24 the fund may be expended only pursuant to appropriation. The fund shall con-  
 25 sist of:

26 (1) The current federal funds that are available for inspections or for  
 27 the prevention of minor's' access to tobacco products or electronic smoking  
 28 devices shall be utilized by the department;

29 (2) The fines from the civil penalties pursuant to section 39-5708,  
 30 Idaho Code; and

31 (3) Moneys from any other source.

32 SECTION 12. That Section 39-5713, Idaho Code, be, and the same is hereby  
 33 amended to read as follows:

34 39-5713. LOCAL ORDINANCES. Nothing in this chapter shall be construed  
 35 to prohibit local units of government from passing ordinances which that are  
 36 more stringent than the provisions of this chapter. Provided however, local  
 37 units of government shall not have the power to require a permit or license  
 38 for the sale or distribution of tobacco products or electronic eigarettes  
 39 smoking devices.

40 SECTION 13. That Section 39-5714, Idaho Code, be, and the same is hereby  
 41 amended to read as follows:

42 39-5714. REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall make  
 43 a delivery sale of tobacco products or electronic smoking devices to any in-  
 44 dividual who is under age eighteen (18) years in this state. ~~No seller shall~~  
 45 ~~make a delivery sale of electronic cigarettes to any minor in this state.~~

1 (2) Each permittee taking a delivery sale order shall comply with: the  
2 age verification requirements set forth in section 39-5715, Idaho Code; the  
3 disclosure and notice requirements set forth in section 39-5716, Idaho Code;  
4 the shipping requirements set forth in section 39-5717, Idaho Code; the  
5 registration and reporting requirements set forth in section 39-5718, Idaho  
6 Code; all tax collection requirements provided by title 63, Idaho Code; and  
7 all other laws of the state of Idaho generally applicable to sales of tobacco  
8 products or electronic smoking devices that occur entirely within Idaho, in-  
9 cluding, but not limited to, those laws imposing excise taxes, sales and use  
10 taxes, licensing and tax stamping requirements, and escrow or other payment  
11 obligations.

12 SECTION 14. That Section 39-5715, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 39-5715. AGE VERIFICATION REQUIREMENTS. ~~(1)~~ No permittee shall mail  
15 or ship tobacco products or electronic smoking devices in connection with a  
16 delivery sale order unless, before mailing or shipping such tobacco products  
17 or electronic smoking devices, the permittee accepting the delivery sale  
18 order first obtains from the prospective customer a certification that in-  
19 cludes proof of age that the purchaser is at least eighteen (18) years old,  
20 the credit or debit card used for payment has been issued in the purchaser's  
21 name, and the address to which the ~~cigarettes~~ tobacco products or electronic  
22 smoking devices are being shipped matches the credit card company's address  
23 for the cardholder or employs technology that requires and authenticates  
24 independent, third-party age and identity verification services, comparing  
25 data against third-party sources.

26 ~~(2) No seller shall mail or ship an electronic cigarette in connection~~  
27 ~~with a delivery sale order unless, before mailing or shipping such elec-~~  
28 ~~tronic cigarette, the seller accepting the delivery sale order first obtains~~  
29 ~~from the prospective customer a certification that includes proof of age~~  
30 ~~that the purchaser is at least eighteen (18) years old, the credit or debit~~  
31 ~~card used for payment has been issued in the purchaser's name and the address~~  
32 ~~to which the electronic cigarette is being shipped matches the credit or~~  
33 ~~debit card company's address for the cardholder.~~

34 SECTION 15. That Section 39-5717, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 39-5717. SHIPPING REQUIREMENTS -- TOBACCO PRODUCTS OR ELECTRONIC  
37 SMOKING DEVICES. Each permittee who mails or ships tobacco products or  
38 electronic smoking devices in connection with a delivery sale order shall  
39 include as part of the shipping documents a clear and conspicuous statement  
40 providing as follows:

41 "TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES: IDAHO LAW PRO-  
42 HIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS,  
43 AND REQUIRES THE PAYMENT OF TAXES PURSUANT TO CHAPTER 25, TITLE 63,  
44 IDAHO CODE. PERSONS VIOLATING THIS MAY BE CIVILLY AND CRIMINALLY  
45 LIABLE."

46 Anyone delivering any such container distributes tobacco products or  
47 electronic smoking devices as defined in section 39-5702 (5), Idaho Code, and

1 is subject to the terms and requirements of this chapter. If a permittee tak-  
2 ing a delivery sale order also delivers the tobacco products or electronic  
3 smoking devices without using a third-party delivery service, the permittee  
4 shall comply with all the requirements of vendor-assisted sales as defined  
5 in section 39-5702(165), Idaho Code.

6 SECTION 16. That Section 39-5717A, Idaho Code, be, and the same is  
7 hereby repealed.

8 SECTION 17. That Section 39-5718, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 39-5718. REGISTRATION AND REPORTING REQUIREMENTS. (1) Prior to making  
11 delivery sales or shipping tobacco products or electronic smoking devices in  
12 connection with any such sales, every business shall obtain a permit from the  
13 department and file with the state tax commission a statement setting forth  
14 the ~~seller's~~ permittee's name, trade name, and the address of the business's  
15 principal place of business and any other place of business.

16 (2) ~~Not~~ No later than the tenth day of each calendar month, each permit-  
17 tee that has made a delivery sale or shipped or delivered tobacco products or  
18 electronic smoking devices in connection with any such sale during the pre-  
19 vious calendar month shall file with the department and the state tax commis-  
20 sion a memorandum or a copy of the invoice ~~which~~ that provides for each and  
21 every such delivery sale:

22 (a) The name and address of the individual to whom the delivery sale was  
23 made;

24 (b) The brand or brands of the tobacco products or electronic smoking  
25 devices that were sold in such delivery sale; and

26 (c) The quantity of tobacco products or electronic smoking devices that  
27 were sold in such delivery sale.

28 (3) Any tobacco products or electronic smoking devices sold or at-  
29 tempted to be sold in a delivery sale that does not meet the requirements of  
30 this chapter shall be forfeited to the state of Idaho.

31 SECTION 18. That the Heading for Chapter 57, Title 39, Idaho Code, be,  
32 and the same is hereby amended to read as follows:

33 CHAPTER 57  
34 PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS OR ELECTRONIC SMOKING  
35 DEVICES

36 SECTION 19. That Section 39-8421, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 39-8421. DEFINITIONS. As used in sections 39-8420 through 39-8425,  
39 Idaho Code:

40 (1) The definitions set forth in section 39-8402, Idaho Code, of the  
41 Idaho tobacco master settlement agreement complementary act, and in this  
42 section, apply to sections 39-8420 through 39-8425, Idaho Code.

1 (2) "Cigarette rolling machine" means any machine or device that has  
2 the capability to produce at least one hundred fifty (150) cigarettes in less  
3 than thirty (30) minutes.

4 (3) "Cigarette rolling machine operator" means any person who owns or  
5 leases or otherwise has available for use a cigarette rolling machine and  
6 makes such a machine available for use by another person in a commercial  
7 setting in order to manufacture a cigarette. No person shall be deemed a  
8 cigarette rolling machine operator based solely upon that person's manufac-  
9 ture, sale, enabling, disabling, or repair of a cigarette rolling machine.

10 (4) "Minor" has the same meaning as that term is defined in section  
11 39-5702 (6), Idaho Code, ~~of the Idaho prevention of minors' access to tobacco~~  
12 ~~act.~~

13 (5) "Person" means natural persons, corporations both foreign and do-  
14 mestic, trusts, partnerships both limited and general, incorporated or un-  
15 incorporated associations, companies, business entities, and any other le-  
16 gal entity, or any other group associated in fact although not a legal en-  
17 tity.

18 (6) ~~"Tobacco products" has the same meaning as that term is defined in~~  
19 ~~section 39-5702 (13), Idaho Code, of the Idaho prevention of minors' access~~  
20 ~~to tobacco act~~ means any substance that contains tobacco, including but not  
21 limited to cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco pa-  
22 pers, or smokeless tobacco.

23 SECTION 20. That Section 39-8423, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25 39-8423. REQUIREMENTS FOR CERTIFICATION. (1) Before a cigarette  
26 rolling machine operator may be certified by the attorney general, the oper-  
27 ator shall certify, under penalty of perjury, that:

28 (a) All tobacco to be used in the operator's cigarette rolling machine,  
29 regardless of the tobacco's label or description thereof, will only be  
30 of a brand family and of a tobacco product manufacturer listed on the di-  
31 rectory maintained by the attorney general pursuant to section 39-8403,  
32 Idaho Code, of the Idaho tobacco master settlement agreement complemen-  
33 tary act;

34 (b) All applicable state tobacco taxes have been paid, as required by  
35 the cigarette and tobacco products tax act, chapter 25, title 63, Idaho  
36 Code, for the tobacco to be used in the operator's cigarette rolling ma-  
37 chine;

38 (c) The operator has obtained, and has a current permit issued, pur-  
39 suant to section 39-5704, Idaho Code, ~~of the Idaho prevention of minors'~~  
40 ~~access to tobacco act;~~

41 (d) All cigarette tubes used in the operator's cigarette rolling ma-  
42 chine shall be constructed of paper of a type determined by the attorney  
43 general, pursuant to regulations to be promulgated by the attorney gen-  
44 eral, to reduce the likely ignition propensity of cigarettes to be made  
45 with such tubes;

46 (e) (i) At any location where the operator has a cigarette rolling  
47 machine, seventy-five percent (75%) of the revenues of the oper-  
48 ator's total merchandise sales at that location are comprised of  
49 tobacco products; or

1 (ii) The location where the cigarette rolling machine is situated  
2 prohibits minors from entering the premises;

3 (f) The operator will not sell cigarettes or make a cigarette rolling  
4 machine available for use, in any quantity less than twenty (20) ciga-  
5 rettes per transaction, except for samples prepared in connection with  
6 the purchase or prospective purchase of tobacco and consumed or de-  
7 stroyed at the premises where the cigarette rolling machine is located;  
8 and

9 (g) The operator will not accept or allow its cigarette rolling machine  
10 to be used to manufacture cigarettes with tobacco that was not first  
11 purchased or obtained from the operator and for which the operator will  
12 timely and properly report to the attorney general as set forth in sub-  
13 section (2) of this section.

14 (2) After being certified, the cigarette rolling machine operator  
15 shall annually certify, under penalty of perjury, to the provisions set  
16 forth in subsection (1) of this section. Additionally, the operator shall  
17 quarterly report to the attorney general on a form prescribed by the attorney  
18 general:

19 (a) The number of cigarettes that the operator's cigarette rolling ma-  
20 chine manufactured during that quarter;

21 (b) The brand families, the tobacco product manufacturer of each brand  
22 family, and the ounces of tobacco of each such brand family that were  
23 used in the operator's cigarette rolling machine to manufacture ciga-  
24 rettes during the quarter; and

25 (c) The person or persons from whom the operator purchased or obtained  
26 the tobacco that the operator's machine used to manufacture cigarettes.

27 (3) The cigarette rolling machine operator's annual certification  
28 shall be due to the attorney general no later than the thirtieth day of April  
29 each year.

30 (4) All tobacco certified under subsection (1) (a) of this section shall  
31 be deemed to be "roll-your-own" tobacco for purposes of section 39-7802(d),  
32 Idaho Code, of the Idaho tobacco master settlement agreement act.

33 (5) A cigarette rolling machine operator shall not be required to com-  
34 ply with the provisions of ~~section 39-8423(1)(d), Idaho Code,~~ subsection  
35 (1) (d) of this section until the attorney general has promulgated rules im-  
36 plementing this subsection, pursuant to section 39-8425, Idaho Code, and the  
37 effective date provided for such rules has passed.

38 SECTION 21. That Section 39-8424, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 39-8424. VIOLATIONS -- ATTORNEY GENERAL AND DISTRICT COURT AUTHORITY  
41 -- REVOCATION OF CERTIFICATION. (1) Any person who violates any provision  
42 of this act, or any certification provided by the attorney general, is sub-  
43 ject to the imposition of a civil penalty by the district court in the amount  
44 set forth in section 39-8406(1), Idaho Code. The attorney general and the  
45 district courts shall have the same authority in enforcing and carrying out  
46 the provisions of this section as is granted the attorney general and dis-  
47 trict courts under sections 39-8406 and 39-8407, Idaho Code, of the Idaho to-  
48 bacco master settlement agreement complementary act.

1 (2) In addition to the authority set forth in subsection (1) of this  
2 section:

3 (a) The district court shall have the authority to revoke the cigarette  
4 rolling machine operator's ~~tobacco~~ permit issued by the department of  
5 health and welfare, pursuant to ~~the Idaho prevention of minors' access~~  
6 ~~to tobacco act chapter 57, title 39, Idaho Code~~, for a period of at least  
7 three (3) months but up to one (1) year.

8 (b) (i) The attorney general may suspend or revoke a cigarette rolling  
9 machine operator's certification for violation of any provisions  
10 of this act or the operator's certification or any rule adopted by  
11 the attorney general pursuant to this act.

12 (ii) A determination by the attorney general to deny a certifica-  
13 tion application or to suspend or revoke a cigarette rolling ma-  
14 chine operator's certification shall be subject to review in the  
15 manner prescribed by Idaho's administrative procedure act, chap-  
16 ter 52, title 67, Idaho Code. In instances where a certification  
17 is suspended or revoked, the cigarette rolling machine operator  
18 may not thereafter use or make the machine available for use and  
19 shall have ten (10) days after receiving actual notice that its  
20 certification has been suspended or revoked to remove the machine  
21 from the operator's commercial premises. If the operator fails to  
22 remove the cigarette rolling machine within this time period, the  
23 machine shall be deemed contraband and subject to seizure and for-  
24 feiture. During the period in which the operator's certification  
25 has been suspended or revoked, the operator may store the machine  
26 at a storage site ~~se~~ as long as the machine is not used by or avail-  
27 able to persons for use to manufacture cigarettes.

28 (3) No person who manufactures a cigarette using a cigarette rolling  
29 machine shall sell or offer that cigarette for sale in this state. This  
30 prohibition shall not apply to any person holding a federal license as a  
31 cigarette manufacturer.

32 (4) Unless expressly provided, the remedies or penalties provided by  
33 this act are cumulative to each other and to the remedies or penalties avail-  
34 able under all other laws of this state.

35 SECTION 22. That Section 56-227F, Idaho Code, be, and the same is hereby  
36 amended to read as follows:

37 56-227F. PUBLIC ASSISTANCE BENEFIT CARDS -- PROHIBITED USES. (1) Any  
38 recipient of public assistance is prohibited from using public assistance  
39 benefit cards or cash obtained with public assistance benefit cards:

40 (a) For the purpose of participating in any of the activities described  
41 under chapters 38 and 49, title 18, Idaho Code, or authorized pursuant  
42 to any state-tribal gaming compact under section 67-429A, Idaho Code;

43 (b) For the purpose of pari-mutuel betting authorized under chapter 25,  
44 title 54, Idaho Code;

45 (c) To purchase lottery tickets or shares authorized under chapter 74,  
46 title 67, Idaho Code;

47 (d) For the purpose of participating in or purchasing tattoo, branding  
48 or body piercing services as defined in section 18-1523, Idaho Code;

1 (e) To purchase cigarettes as defined in section 39-7802(d), Idaho  
2 Code, or tobacco products or electronic smoking devices as defined in  
3 section 39-5702(13), Idaho Code;

4 (f) To purchase any items regulated under title 23, Idaho Code;

5 (g) For the purpose of adult entertainment at venues with performances  
6 that contain sexually oriented material where minors under the age of  
7 eighteen (18) years are prohibited; or

8 (h) For the purpose of purchasing or participating in any activities in  
9 any location listed in subsection (2) of this section.

10 (2) The following businesses are required to comply with the provisions  
11 of this section:

12 (a) Any establishment or business licensed under chapter 9, title 23,  
13 Idaho Code;

14 (b) State liquor stores defined under section 23-902, Idaho Code, with  
15 the exception of special distributors as referenced in chapter 3, title  
16 23, Idaho Code;

17 (c) Any business or agency that issues or underwrites bail bonds as de-  
18 fined in section 41-1038(3), Idaho Code;

19 (d) Gambling establishments licensed under Idaho law;

20 (e) Any business or establishment that offers tattoo, body piercing or  
21 branding services as defined in section 18-1523, Idaho Code;

22 (f) Adult entertainment venues with performances that contain sexually  
23 oriented material where minors under the age of eighteen (18) years are  
24 prohibited; and

25 (g) Any establishment where persons under the age of eighteen (18)  
26 years are not permitted.

27 (3) The department shall notify any business determined to be in viola-  
28 tion of the provisions of subsection (2) of this section and the licensing  
29 authority of any such business, if applicable, that such business has con-  
30 tinued to allow the use of a public assistance benefit card in violation of  
31 subsection (2) of this section. The department may require the Idaho quest  
32 electronic benefits transfer (EBT) card business identification number  
33 (BIN) be disabled at any business found to be in violation of subsection (2)  
34 of this section. Any business in violation of subsection (2) of this section  
35 may also be required to deny all public assistance cash transactions made  
36 with an Idaho quest EBT card at any automated teller machine (ATM) located  
37 in their establishment. All costs associated with disabling the BIN and ATM  
38 will be the responsibility of such business owner.

39 (4) Only the recipient, an eligible member of the recipient's house-  
40 hold or the recipient's authorized representative may use a public assis-  
41 tance benefit card or the benefit, and such use shall only be for the re-  
42 spective benefit program purposes. The recipient shall not sell, attempt to  
43 sell, exchange or donate a public assistance benefit card or any benefits to  
44 any other person or entity.

45 (5) A violation of subsection (1) or (4) of this section by a recipient  
46 constitutes a misdemeanor.

47 (a) The department shall notify all recipients of public assistance  
48 benefit cards that any violation of subsection (1) or (4) of this sec-  
49 tion could result in legal proceedings and forfeiture of all cash public  
50 assistance.

1 (b) Whenever the department has confirmed that a person has violated  
2 subsection (1) or (4) of this section, the department shall notify the  
3 person in writing that the violation could result in legal proceedings  
4 and forfeiture of all cash public assistance.

5 (6) As used in this section, "public assistance" or "public assistance  
6 benefit" means benefits provided to a recipient pursuant to the temporary  
7 assistance for families in Idaho (TAFI) program on an Idaho quest EBT card  
8 account.

9 (7) This section shall be enforced by the director of the department of  
10 health and welfare in cooperation with local law enforcement and prosecuting  
11 agencies.