

IN THE SENATE

SENATE BILL NO. 1087

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TOBACCO AND ELECTRONIC SMOKING DEVICES; AMENDING SECTION
2 39-5702, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE A TECHNICAL COR-
3 RECTION; AMENDING SECTION 39-5703, IDAHO CODE, TO PROVIDE THAT PARENTS
4 OR GUARDIANS OF CERTAIN MINORS MAY BE REQUIRED TO PARTICIPATE IN AWARE-
5 NESS PROGRAMS; AMENDING SECTION 39-5704, IDAHO CODE, TO REVISE AN AGE
6 REQUIREMENT AND TO REVISE PROVISIONS REGARDING MINOR EMPLOYEES; AMEND-
7 ING SECTION 39-5705, IDAHO CODE, TO REVISE AN AGE REQUIREMENT; AMENDING
8 SECTION 39-5710, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE PAR-
9 TICIPATION OF MINORS IN CERTAIN INSPECTIONS AND TO MAKE A TECHNICAL
10 CORRECTION; AMENDING SECTION 39-5713, IDAHO CODE, TO PROHIBIT CERTAIN
11 LOCAL REGULATION AND TAXES; AMENDING SECTION 39-5714, IDAHO CODE, TO
12 REVISE AN AGE REQUIREMENT; AMENDING SECTION 39-5715, IDAHO CODE, TO
13 REVISE AN AGE REQUIREMENT; AND AMENDING SECTION 39-5717, IDAHO CODE, TO
14 REVISE PROVISIONS REGARDING SHIPPING REQUIREMENTS.
15

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

17 SECTION 1. That Section 39-5702, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 39-5702. DEFINITIONS. The terms used in this chapter are defined as
20 follows:

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

24 (2) "Delivery sale" means to distribute tobacco products or electronic
25 smoking devices to a consumer in a state where either:

26 (a) The individual submits the order for such sale by means of a
27 telephonic or other method of voice transmission, data transfer via
28 computer networks, including the internet and other online services, or
29 facsimile, or the mails; or

30 (b) The tobacco products or electronic smoking devices are delivered by
31 use of the mails or a delivery service.

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

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

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

39 (6) "Minor" means a person under ~~eighteen (18)~~ twenty-one (21) years of
40 age.

41 (7) "Minor-exempt permit" means a permittee location whose revenues
42 from the sale of alcoholic beverages for on-site consumption comprises at

1 least fifty-five percent (55%) of total revenues, or whose products and ser-
2 vices are primarily obscene, pornographic, profane, or sexually oriented,
3 is exempt from inspections assisted by a minor, if minors are not allowed in
4 the location and such prohibition is posted clearly on all entrance doors.

5 (8) "Permit" means a permit issued by the department for the sale or
6 distribution of tobacco products or electronic smoking devices.

7 (9) "Permittee" means the holder of a valid permit for the sale or dis-
8 tribution of tobacco products or electronic smoking devices.

9 (10) "Photographic identification" means state, district, territo-
10 rial, possession, provincial, national or other equivalent government
11 driver's license, identification card or military card, in all cases bearing
12 a photograph and a date of birth, or a valid passport.

13 (11) "Random unannounced inspection" means an inspection of retail out-
14 lets by a law enforcement agency or by the department, with or without the as-
15 sistance of a minor, to monitor compliance of this chapter.

16 (12) "Seller" means the person who physically sells or distributes to-
17 bacco products or electronic smoking devices.

18 (13) (a) "Tobacco product or electronic smoking device" means:

19 (i) Any substance containing, made of, or derived from tobacco
20 or nicotine that is intended for human consumption or is likely to
21 be consumed, whether inhaled, absorbed, or ingested by any other
22 means, including but not limited to cigarettes, cigars, pipes,
23 snuff, smoking or chewing tobacco, snus, tobacco papers, or smoke-
24 less tobacco;

25 (ii) Any electronic smoking device that may be used to deliver an
26 aerosolized or a vaporized substance to the person inhaling from
27 the device, including but not limited to an electronic cigarette,
28 an electronic cigar, an electronic pipe, a vape pen, or an elec-
29 tronic hookah, or any component, part, or accessory of such a
30 device, or any substance intended to be aerosolized or vaporized
31 during use of the device, whether or not the substance contains
32 nicotine, or any heated or lighted device intended to be used for
33 inhalation; or

34 (iii) Any components, parts, or accessories of a tobacco product
35 or an electronic smoking device, whether or not they contain to-
36 bacco or nicotine, including but not limited to filters, rolling
37 papers, blunt or hemp wraps, and pipes, whether manufactured,
38 distributed, marketed, or sold as an electronic cigarette, elec-
39 tronic cigar, electronic hookah, or vape pen, or under any other
40 product name or descriptor.

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

45 (14) "Vending machine" means any mechanical, electronic, or other sim-
46 ilar device which, upon the insertion of tokens, money or any other form of
47 payment, dispenses tobacco products or electronic smoking devices.

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

1 (16) "Without a permit" means a business that has failed to obtain a per-
2 mit or a business whose permit is suspended or revoked.

3 SECTION 2. That Section 39-5703, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 39-5703. POSSESSION, DISTRIBUTION, OR USE BY A MINOR. (1) It shall be
6 unlawful for a minor to possess, receive, purchase, use, or consume tobacco
7 products or electronic smoking devices or to attempt any of the foregoing.

8 (2) It shall be unlawful for a minor to sell or distribute tobacco prod-
9 ucts or electronic smoking devices or to attempt either of the foregoing.

10 (3) It shall be unlawful for a minor to provide false identification or
11 make any false statement regarding their age in an attempt to obtain tobacco
12 products or electronic smoking devices.

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

15 (5) A minor may possess but not sell or distribute tobacco products or
16 electronic smoking devices in the course of employment, for duties such as
17 stocking shelves or carrying purchases to customers' vehicles.

18 (6) Penalties for violations by a minor. A violation of subsection (1)
19 of this section by a minor shall constitute an infraction and shall be pun-
20 ishable by a fine of seventeen dollars and fifty cents (\$17.50). The first
21 violation of subsection (2) or (3) of this section by a minor shall consti-
22 tute an infraction and shall be punishable by a fine of two hundred dollars
23 (\$200). A subsequent violation of subsection (2) or (3) of this section by a
24 minor shall constitute a misdemeanor and shall be punishable by imprisonment
25 in an appropriate facility not exceeding thirty (30) days, a fine not exceed-
26 ing three hundred dollars (\$300), or both such fine and imprisonment. The
27 court may, in addition to the penalties provided in this section, require the
28 minor and, if the minor is under eighteen (18) years of age, the minor's par-
29 ents or legal guardian to attend tobacco product or electronic smoking de-
30 vice awareness programs or to perform community service in programs related
31 to tobacco product or electronic smoking device awareness.

32 SECTION 3. That Section 39-5704, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 39-5704. PERMITTING OF TOBACCO PRODUCTS OR ELECTRONIC SMOKING
35 DEVICES RETAILERS. (1) It shall be unlawful to sell or distribute or offer
36 tobacco products or electronic smoking devices for sale or distribution at
37 retail or to possess tobacco products or electronic smoking devices with
38 the intention of selling at retail without having first obtained a tobacco
39 product or electronic smoking device permit from the department, which shall
40 be the only retail tobacco product or electronic smoking device permit or
41 license required. Provided however, this section shall not be deemed to
42 require a wholesaler or manufacturer's representative or employees who, in
43 the course of their employment, stock shelves and replenish tobacco products
44 or electronic smoking devices at a permittee's place of business to obtain
45 a permit.

46 (2) The department shall administer the permitting of tobacco product
47 or electronic smoking device retailers and shall be authorized to ensure

1 compliance with this chapter. The department may promulgate rules in com-
 2 pliance with chapter 52, title 67, Idaho Code, regarding permitting of
 3 tobacco product or electronic smoking device retailers, inspections, and
 4 compliance checks, effective training, and employment practices under this
 5 chapter.

6 (3) Permits shall be issued annually for each business location to en-
 7 sure compliance with the requirements of this chapter. A copy of this chap-
 8 ter, rules adopted by the department, appropriate signage required by this
 9 chapter, and any materials deemed necessary shall be provided with each per-
 10 mit issued.

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

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

14 (6) A permittee may display a sign in each location within a place of
 15 business where tobacco products or electronic smoking devices are sold or
 16 distributed. A sign may be clearly visible to the customer and the seller and
 17 shall state: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS OR ELECTRONIC
 18 SMOKING DEVICES TO PERSONS UNDER THE AGE OF ~~EIGHTEEN (18)~~ TWENTY-ONE (21)
 19 YEARS. PROOF OF AGE REQUIRED. ANYONE WHO SELLS OR DISTRIBUTES TOBACCO PROD-
 20 UCTS OR ELECTRONIC SMOKING DEVICES TO A MINOR PERSON UNDER THE AGE OF TWENTY-
 21 ONE (21) YEARS IS SUBJECT TO STRICT FINES AND PENALTIES. MINORS PERSONS UNDER
 22 THE AGE OF TWENTY-ONE (21) YEARS ARE SUBJECT TO FINES AND PENALTIES."

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

25 (8) It shall be unlawful for the permittee to allow employees who are
 26 minors to sell or distribute tobacco products or electronic smoking devices,
 27 except as provided in this subsection. ~~Exception:~~ Employees who are minors
 28 may possess but not sell or distribute tobacco products or electronic smok-
 29 ing devices in the course of employment, for such duties as stocking shelves
 30 or carrying purchases to customers' vehicles; and employees who are eighteen
 31 (18) years to twenty (20) years of age may sell or distribute tobacco prod-
 32 ucts or electronic smoking devices in the course and scope of their employ-
 33 ment.

34 SECTION 4. That Section 39-5705, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS OR ELECTRONIC SMOK-
 37 ING DEVICES TO A MINOR. (1) It shall be unlawful to sell, distribute, or offer
 38 tobacco products or electronic smoking devices to a minor.

39 (2) It shall be an affirmative defense that the seller of a tobacco
 40 product or an electronic smoking device to a minor in violation of this
 41 section had requested, examined, and reasonably relied upon a photographic
 42 identification from such person establishing that the person is at least
 43 ~~eighteen (18)~~ twenty-one (21) years of age prior to selling such person a
 44 tobacco product or an electronic smoking device. The failure of a seller
 45 to request and examine photographic identification from a person under
 46 ~~eighteen (18)~~ twenty-one (21) years of age prior to the sale of a tobacco
 47 product or an electronic smoking device to such person shall be construed
 48 against the seller and form a conclusive basis for the seller's violation of
 49 this section.

1 SECTION 5. That Section 39-5710, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the
4 legislature that law enforcement agencies, the attorney general, and the de-
5 partment shall enforce this chapter and rules promulgated pursuant thereto
6 in a manner that can reasonably be expected to significantly reduce the ex-
7 tent to which tobacco products and electronic smoking devices are sold or
8 distributed to minors.

9 (2) Law enforcement agencies may conduct random unannounced inspec-
10 tions at locations where tobacco products or electronic smoking devices are
11 sold or distributed to ensure compliance with this chapter. A copy of all
12 citations issued under this chapter shall be submitted to the department.

13 (3) The department shall conduct at least one (1) random unannounced
14 inspection per year at all locations where tobacco products or electronic
15 smoking devices are sold or distributed at retail to ensure compliance with
16 this chapter. The department shall conduct inspections for minor-exempt
17 permittees without the assistance of a minor. The department shall conduct
18 inspections for all other permittees with the assistance of a minor. Each
19 year, the department shall conduct random unannounced inspections equal to
20 the number of permittees multiplied by the violation percentage rate re-
21 ported for the previous year multiplied by a factor of ten (10). Local law
22 enforcement agencies are encouraged to contract with the department to per-
23 form these required inspections.

24 (4) Minors may assist with random unannounced inspections with, pro-
25 vided that minors under the age of eighteen (18) years must have the writ-
26 ten consent of a parent or legal guardian. When assisting with these inspec-
27 tions, minors shall not provide false identification ~~nor~~ or make any false
28 statement regarding their age.

29 (5) Citizens may file a written complaint of noncompliance of this
30 chapter with the department, or with a law enforcement agency. Permit hold-
31 ers under 26 U.S.C. 5712 may file written complaints relating to delivery
32 sales to the department or the attorney general's offices. Complaints shall
33 be investigated and the proper enforcement actions taken.

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

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

41 SECTION 6. That Section 39-5713, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 39-5713. LOCAL ORDINANCES PROHIBITED. ~~Nothing in this chapter shall~~
44 ~~be construed to prohibit local units of government from passing ordinances~~
45 ~~which are more stringent than the provisions of this chapter. Provided how-~~
46 ~~ever, local units of government shall not have the power to require a permit~~
47 ~~or license for the sale or distribution of tobacco products or electronic~~
48 ~~cigarettes. No local unit of government may adopt or enforce requirements~~

1 for the regulation, marketing, or sale of tobacco products or electronic
2 smoking devices that are more restrictive than or in addition to this chap-
3 ter. No local unit of government may impose or enforce a tax or fee on tobacco
4 products or electronic smoking devices. This subsection shall not be con-
5 strued to prevent a local unit of government from regulating the public
6 use of tobacco products or electronic smoking devices pursuant to section
7 39-5511, Idaho Code.

8 SECTION 7. That Section 39-5714, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 39-5714. REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall make
11 a delivery sale of tobacco products or electronic smoking devices to any in-
12 dividual who is under age ~~eighteen (18)~~ twenty-one (21) years in this state.

13 (2) Each permittee taking a delivery sale order shall comply with: the
14 age verification requirements set forth in section 39-5715, Idaho Code; the
15 disclosure and notice requirements set forth in section 39-5716, Idaho Code;
16 the shipping requirements set forth in section 39-5717, Idaho Code; the
17 registration and reporting requirements set forth in section 39-5718, Idaho
18 Code; all tax collection requirements provided by title 63, Idaho Code; and
19 all other laws of the state of Idaho generally applicable to sales of tobacco
20 products or electronic smoking devices that occur entirely within Idaho,
21 including but not limited to those laws imposing excise taxes, sales and use
22 taxes, licensing and tax stamping requirements, and escrow or other payment
23 obligations.

24 SECTION 8. That Section 39-5715, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 39-5715. AGE VERIFICATION REQUIREMENTS. No permittee shall mail or
27 ship tobacco products or electronic smoking devices in connection with a
28 delivery sale order unless, before mailing or shipping such tobacco products
29 or electronic smoking devices, the permittee accepting the delivery sale
30 order first obtains from the prospective customer a certification that in-
31 cludes proof of age that the purchaser is at least ~~eighteen (18)~~ twenty-one
32 (21) years old, the credit or debit card used for payment has been issued in
33 the purchaser's name, and the address to which the tobacco products or elec-
34 tronic smoking devices are being shipped matches the credit card company's
35 address for the cardholder or employs technology that requires and authen-
36 ticates independent, third-party age and identity verification services,
37 comparing data against third-party sources.

38 SECTION 9. That Section 39-5717, Idaho Code, be, and the same is hereby
39 amended to read as follows:

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

1 "TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES: IDAHO LAW PRO-
2 HIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF ~~EIGHTEEN~~ TWENTY-ONE
3 (21) YEARS, AND REQUIRES THE PAYMENT OF TAXES PURSUANT TO CHAPTER
4 25, TITLE 63, IDAHO CODE. PERSONS VIOLATING THIS LAW MAY BE CIVILLY
5 AND CRIMINALLY LIABLE."
6

7 Anyone ~~delivering~~ who delivers any such container distributes tobacco
8 products or electronic smoking devices as defined in section 39-5702(5),
9 Idaho Code, and is subject to the terms and requirements of this chapter. If
10 a permittee taking a delivery sale order also delivers the tobacco products
11 or electronic smoking devices without using a third-party delivery service,
12 the permittee shall comply with all the requirements of vendor-assisted
 sales as defined in section 39-5702(15), Idaho Code.