

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 538

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 AND TO MAKE TECHNICAL CORRECTIONS;  
7 AMENDING SECTION 39-5705, IDAHO CODE, TO REVISE TERMINOLOGY AND TO  
8 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5706, IDAHO CODE, TO  
9 REVISE TERMINOLOGY, TO PROHIBIT CERTAIN SALES OR DISTRIBUTION ON AND  
10 AFTER A CERTAIN DATE, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
11 TION 39-5707, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL  
12 CORRECTION; AMENDING SECTION 39-5708, IDAHO CODE, TO REVISE TERMI-  
13 NOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5709,  
14 IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION;  
15 AMENDING SECTION 39-5710, IDAHO CODE, TO REVISE TERMINOLOGY AND TO  
16 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5711, IDAHO CODE, TO  
17 REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
18 TION 39-5714, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL  
19 CORRECTIONS; AMENDING SECTION 39-5715, IDAHO CODE, TO REVISE TERMI-  
20 NOLOGY, TO PROVIDE FOR CERTAIN VERIFICATION TECHNOLOGY, AND TO MAKE A  
21 TECHNICAL CORRECTION; AMENDING SECTION 39-5717, IDAHO CODE, TO REVISE  
22 TERMINOLOGY, TO PROVIDE A CORRECT CODE REFERENCE, AND TO MAKE TECHNICAL  
23 CORRECTIONS; REPEALING SECTION 39-5717A, IDAHO CODE, RELATING TO SHIP-  
24 PING REQUIREMENTS FOR ELECTRONIC CIGARETTES; AMENDING SECTION 39-5718,  
25 IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION;  
26 AMENDING THE HEADING FOR CHAPTER 57, TITLE 39, IDAHO CODE; AMENDING  
27 SECTION 39-8421, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION  
28 39-8423, IDAHO CODE, TO REMOVE A REFERENCE TO A CERTAIN ACT AND TO MAKE  
29 TECHNICAL CORRECTIONS; AMENDING SECTION 39-8424, IDAHO CODE, TO REVISE  
30 TERMINOLOGY, TO PROVIDE A CORRECT CODE REFERENCE, AND TO MAKE A TECH-  
31 NICAL CORRECTION; AND AMENDING SECTION 56-227F, IDAHO CODE, TO REVISE  
32 TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.  
33

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

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

37 39-5701. LEGISLATIVE FINDINGS AND INTENT. The prevention of youth ac-  
38 cess to tobacco products and electronic smoking devices within the state of  
39 Idaho is hereby declared to be a state goal to promote the general health  
40 and welfare of Idaho's young people. ~~Twenty-seven percent (27%) of Idaho's~~  
41 ~~youth currently smoke and almost twenty-seven percent (27%) of boys in Idaho~~  
42 ~~use chewing tobacco which is significantly higher than the national average.~~

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

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

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

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

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

34        39-5702. DEFINITIONS. The terms used in this chapter are defined as  
 35 follows:

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

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

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

45        (b) ~~¶~~The tobacco products or electronic cigarettes smoking devices are  
 46 delivered by use of the mails or a delivery service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (iii) Any components, parts, or accessories of a tobacco product  
47 or an electronic smoking device, whether or not they contain to-  
48 bacco or nicotine, including but not limited to filters, rolling  
49 papers, blunt or hemp wraps, and pipes, whether manufactured,  
50 distributed, marketed, or sold as an electronic cigarette, elec-

1            tronic cigar, electronic hookah, or vape pen, or under any other  
 2            product name or descriptor.

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

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

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

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

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

18            39-5703. POSSESSION, DISTRIBUTION, OR USE BY A MINOR. (1) It shall be  
 19 unlawful for a minor to possess, receive, purchase, use, or consume tobacco  
 20 products or electronic ~~cigarettes~~ smoking devices or to attempt any of the  
 21 foregoing.

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

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

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

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

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

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

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

13           (2) The department shall administer the permitting of tobacco product  
 14 or electronic smoking device retailers and shall be authorized to ensure  
 15 compliance with this chapter. The department may promulgate rules in com-  
 16 pliance with chapter 52, title 67, Idaho Code, regarding permitting of  
 17 tobacco product or electronic smoking device retailers, inspections, and  
 18 compliance checks, effective training, and employment practices under this  
 19 chapter.

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

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

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

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

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

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

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

46           39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS AND OR ELECTRONIC  
 47 CIGARETTES SMOKING DEVICES TO A MINOR. (1) It shall be unlawful to sell, dis-  
 48 tribute, or offer tobacco products or electronic ~~cigarettes~~ smoking devices  
 49 to a minor.

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

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

14 39-5706. VENDOR-ASSISTED SALES. (1) It shall be unlawful to sell or  
 15 distribute tobacco products or electronic cigarettes smoking devices by any  
 16 means other than vendor-assisted sales where the customer has no access to  
 17 the product except through the assistance of the seller.

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

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

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

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

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

31 39-5707. OPENED PACKAGES AND SAMPLES. (1) It shall be unlawful to sell  
 32 or distribute tobacco products or electronic smoking devices for commercial  
 33 purposes other than in the federally required sealed package provided by the  
 34 manufacturer with all the required warning labels and health warnings.

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

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

41 39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT -- CIVIL PENALTY FOR  
 42 VIOLATIONS RELATING TO ELECTRONIC CIGARETTES. (1) Any permittee who fails to  
 43 comply with any part of this chapter, or any current state or local law or  
 44 rule or regulation regarding the sale or distribution of tobacco products or  
 45 electronic smoking devices shall be subject to a civil penalty as provided in

1 this section or have their permit suspended, pursuant to compliance with the  
2 contested case provisions of the Idaho administrative procedure act, chap-  
3 ter 52, title 67, Idaho Code, or both.

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

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

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

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

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

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

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

44 39-5709. CRIMINAL PENALTIES FOR VIOLATIONS WITHOUT A PERMIT. Sale or  
45 distribution of tobacco products or electronic smoking devices, or any vio-  
46 lation of this chapter, without a permit is considered by the state of Idaho  
47 as an effort to subvert the state's public purpose to prevent minor's access  
48 to tobacco products or electronic smoking devices.

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

12           (2) In addition to the penalties set forth in subsection (1) of this  
13 section, the court may impose an additional fine of one thousand dollars  
14 (\$1,000) per day beginning the day following the date of citation as long  
15 as the illegal tobacco products or electronic smoking devices sales or dis-  
16 tribution continues. The first seven (7) days of additional fines may be  
17 suspended, provided that the business or seller is able to prove that the  
18 business or seller has applied for the permit within seven (7) days of the  
19 citation.

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

22           39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the  
23 legislature that law enforcement agencies, the attorney general, and the de-  
24 partment shall enforce this chapter and rules promulgated pursuant thereto  
25 in a manner that can reasonably be expected to significantly reduce the ex-  
26 tent to which tobacco products and electronic ~~cigarettes~~ smoking devices are  
27 sold or distributed to minors.

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

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

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

48           (5) Citizens may file a written complaint of noncompliance of this  
49 chapter with the department, or with a law enforcement agency. Permit hold-



1    ers under 26 U.S.C. ~~section~~ 5712, may file written complaints relating to  
 2    delivery sales to the department or the attorney general's offices. Com-  
 3    plaints shall be investigated and the proper enforcement actions taken.

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

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

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

13       39-5711.    FUNDING AND CREATION OF PREVENTION OF MINORS' ACCESS TO TO-  
 14   BACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES FUND. There is hereby created  
 15   the prevention of minors' access to tobacco products or electronic smoking  
 16   devices fund in the state treasury. Moneys in the fund shall be used to fund  
 17   the administration, inspections and enforcement of this chapter. Moneys in  
 18   the fund may be expended only pursuant to appropriation. The fund shall con-  
 19   sist of:

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

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

25       (3) Moneys from any other source.

26       SECTION 12. That Section 39-5714, Idaho Code, be, and the same is hereby  
 27   amended to read as follows:

28       39-5714.    REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall make  
 29   a delivery sale of tobacco products or electronic smoking devices to any in-  
 30   dividual who is under age eighteen (18) years in this state. ~~No seller shall~~  
 31   ~~make a delivery sale of electronic cigarettes to any minor in this state.~~

32       (2) Each permittee taking a delivery sale order shall comply with: the  
 33   age verification requirements set forth in section 39-5715, Idaho Code; the  
 34   disclosure and notice requirements set forth in section 39-5716, Idaho Code;  
 35   the shipping requirements set forth in section 39-5717, Idaho Code; the  
 36   registration and reporting requirements set forth in section 39-5718, Idaho  
 37   Code; all tax collection requirements provided by title 63, Idaho Code; and  
 38   all other laws of the state of Idaho generally applicable to sales of tobacco  
 39   products or electronic smoking devices that occur entirely within Idaho, in-  
 40   cluding, but not limited to, those laws imposing excise taxes, sales and use  
 41   taxes, licensing and tax stamping requirements, and escrow or other payment  
 42   obligations.

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

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

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

21           SECTION 14. That Section 39-5717, Idaho Code, be, and the same is hereby  
22 amended to read as follows:

23           39-5717. SHIPPING REQUIREMENTS -- TOBACCO PRODUCTS OR ELECTRONIC  
24 SMOKING DEVICES. Each permittee who mails or ships tobacco products or  
25 electronic smoking devices in connection with a delivery sale order shall  
26 include as part of the shipping documents a clear and conspicuous statement  
27 providing as follows:

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

33           Anyone delivering any such container distributes tobacco products or  
34 electronic smoking devices as defined in section 39-5702 (5), Idaho Code, and  
35 is subject to the terms and requirements of this chapter. If a permittee tak-  
36 ing a delivery sale order also delivers the tobacco products or electronic  
37 smoking devices without using a third-party delivery service, the permittee  
38 shall comply with all the requirements of vendor-assisted sales as defined  
39 in section 39-5702 (165), Idaho Code.

40           SECTION 15. That Section [39-5717A](#), Idaho Code, be, and the same is  
41 hereby repealed.

42           SECTION 16. That Section 39-5718, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44           39-5718. REGISTRATION AND REPORTING REQUIREMENTS. (1) Prior to making  
45 delivery sales or shipping tobacco products or electronic smoking devices in  
46 connection with any such sales, every business shall obtain a permit from the

1 department and file with the state tax commission a statement setting forth  
 2 the seller's permittee's name, trade name, and the address of the business's  
 3 principal place of business and any other place of business.

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

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

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

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

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

19 SECTION 17. That the Heading for Chapter 57, Title 39, Idaho Code, be,  
 20 and the same is hereby amended to read as follows:

21 CHAPTER 57

22 PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS OR ELECTRONIC SMOKING  
 23 DEVICES

24 SECTION 18. That Section 39-8421, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 39-8421. DEFINITIONS. As used in sections 39-8420 through 39-8425,  
 27 Idaho Code:

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

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

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

40 (4) "Minor" has the same meaning as that term is defined in section  
 41 39-5702(6), Idaho Code, ~~of the Idaho prevention of minors' access to tobacco~~  
 42 ~~act.~~

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

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

6           SECTION 19. That Section 39-8423, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8           39-8423. REQUIREMENTS FOR CERTIFICATION. (1) Before a cigarette  
9 rolling machine operator may be certified by the attorney general, the oper-  
10 ator shall certify, under penalty of perjury, that:

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

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

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

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

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

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

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

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

46           (2) After being certified, the cigarette rolling machine operator  
47 shall annually certify, under penalty of perjury, to the provisions set  
48 forth in subsection (1) of this section. Additionally, the operator shall

1 quarterly report to the attorney general on a form prescribed by the attorney  
2 general:

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

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

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

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

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

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

22 SECTION 20. That Section 39-8424, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 39-8424. VIOLATIONS -- ATTORNEY GENERAL AND DISTRICT COURT AUTHORITY  
25 -- REVOCATION OF CERTIFICATION. (1) Any person who violates any provision  
26 of this act, or any certification provided by the attorney general, is sub-  
27 ject to the imposition of a civil penalty by the district court in the amount  
28 set forth in section 39-8406(1), Idaho Code. The attorney general and the  
29 district courts shall have the same authority in enforcing and carrying out  
30 the provisions of this section as is granted the attorney general and dis-  
31 trict courts under sections 39-8406 and 39-8407, Idaho Code, of the Idaho to-  
32 bacco master settlement agreement complementary act.

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

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

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

44 (ii) A determination by the attorney general to deny a certifica-  
45 tion application or to suspend or revoke a cigarette rolling ma-  
46 chine operator's certification shall be subject to review in the  
47 manner prescribed by Idaho's administrative procedure act, chap-  
48 ter 52, title 67, Idaho Code. In instances where a certification  
49 is suspended or revoked, the cigarette rolling machine operator

1           may not thereafter use or make the machine available for use and  
2           shall have ten (10) days after receiving actual notice that its  
3           certification has been suspended or revoked to remove the machine  
4           from the operator's commercial premises. If the operator fails to  
5           remove the cigarette rolling machine within this time period, the  
6           machine shall be deemed contraband and subject to seizure and for-  
7           feiture. During the period in which the operator's certification  
8           has been suspended or revoked, the operator may store the machine  
9           at a storage site ~~se~~ as long as the machine is not used by or avail-  
10          able to persons for use to manufacture cigarettes.

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

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

18          SECTION 21. That Section 56-227F, Idaho Code, be, and the same is hereby  
19          amended to read as follows:

20          56-227F. PUBLIC ASSISTANCE BENEFIT CARDS -- PROHIBITED USES. (1) Any  
21          recipient of public assistance is prohibited from using public assistance  
22          benefit cards or cash obtained with public assistance benefit cards:

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

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

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

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

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

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

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

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

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

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

45          (b) State liquor stores defined under section 23-902, Idaho Code, with  
46          the exception of special distributors as referenced in chapter 3, title  
47          23, Idaho Code;

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

1 (d) Gambling establishments licensed under Idaho law;

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

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

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

9 (3) The department shall notify any business determined to be in viola-  
10 tion of the provisions of subsection (2) of this section and the licensing  
11 authority of any such business, if applicable, that such business has con-  
12 tinued to allow the use of a public assistance benefit card in violation of  
13 subsection (2) of this section. The department may require the Idaho quest  
14 electronic benefits transfer (EBT) card business identification number  
15 (BIN) be disabled at any business found to be in violation of subsection (2)  
16 of this section. Any business in violation of subsection (2) of this section  
17 may also be required to deny all public assistance cash transactions made  
18 with an Idaho quest EBT card at any automated teller machine (ATM) located  
19 in their establishment. All costs associated with disabling the BIN and ATM  
20 will be the responsibility of such business owner.

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

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

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

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

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

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