

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 588

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TOBACCO PRODUCTS; PROVIDING LEGISLATIVE INTENT; AMENDING CHAP-  
2 TER 57, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-5719,  
3 IDAHO CODE, TO ESTABLISH EDUCATIONAL PROGRAMS RELATING TO ELECTRONIC  
4 SMOKING DEVICES, TO PROVIDE REQUIREMENTS FOR EDUCATIONAL PROGRAMS, TO  
5 DEFINE A TERM, AND TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND WELFARE  
6 MAY PROMULGATE RULES; AMENDING SECTION 63-2513, IDAHO CODE, TO DEFINE  
7 A TERM, TO PROVIDE FOR CONTRABAND GOODS, TO REVISE TERMINOLOGY, AND TO  
8 PROVIDE FOR THE COLLECTION AND REPORTING OF A CERTAIN TAX; AMENDING SEC-  
9 TION 63-2514, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE A CODE REF-  
10 ERENCE, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-2515,  
11 IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR THE COLLECTION AND RE-  
12 PORTING OF A CERTAIN TAX, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
13 SECTION 63-2551, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECH-  
14 NICAL CORRECTIONS; AMENDING SECTION 63-2552A, IDAHO CODE, TO PROVIDE  
15 FOR THE USE OF FUNDS FROM A CERTAIN TAX; AMENDING CHAPTER 25, TITLE 63,  
16 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2552C, IDAHO CODE, TO  
17 ESTABLISH THE ELECTRONIC SMOKING DEVICE EDUCATION FUND; AMENDING SEC-  
18 TION 63-2554, IDAHO CODE, TO PROVIDE FOR THE REVOCATION AND EXPIRATION  
19 OF A CERTAIN PERMIT AND TO PROVIDE A PENALTY; AMENDING SECTION 63-2564,  
20 IDAHO CODE, TO PROVIDE FOR THE DISTRIBUTION OF CERTAIN TAX REVENUES AND  
21 TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 25, TITLE 63, IDAHO  
22 CODE, BY THE ADDITION OF A NEW SECTION 63-2566, IDAHO CODE, TO PROVIDE  
23 FOR THE EXCHANGE OF CERTAIN INFORMATION AGREEMENTS.  
24

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

26 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that  
27 any funds collected from the tax on liquid nicotine used in electronic smok-  
28 ing devices pursuant to sections 63-2552 and 63-2552A, Idaho Code, shall be  
29 used to fund the educational programs established in section 39-5719, Idaho  
30 Code. Any surplus funds collected over the amount appropriated for the fund-  
31 ing of such programs shall be used for existing health care programs cur-  
32 rently funded by the General Fund subject to appropriation.

33 SECTION 2. That Chapter 57, Title 39, Idaho Code, be, and the same is  
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
35 ignated as Section 39-5719, Idaho Code, and to read as follows:

36 39-5719. ELECTRONIC SMOKING DEVICES -- EDUCATIONAL PROGRAMS. (1) The  
37 department of health and welfare shall establish in each public health dis-  
38 trict an educational program relating to the use of electronic smoking de-  
39 vices by minors. The educational programs shall be administered by each pub-  
40 lic health district to educate students, parents, teachers, and the commu-

1 nity at large on the dangers of the use of electronic smoking devices by mi-  
2 nors.

3 (2) Such programs shall include, but not be limited to:

4 (a) Education on the effects of electronic smoking devices use for both  
5 liquid nicotine and tetrahydrocannabinols (THC);

6 (b) Education on how to identify and prevent the use of electronic smok-  
7 ing devices by minors;

8 (c) A list of activities that can be used by minors as an alternative to  
9 using electronic smoking devices;

10 (d) Information on the health, addiction, and environmental effects of  
11 the use of electronic smoking devices; and

12 (e) Referral information for parents and teachers if they suspect prob-  
13 lematic use by a minor.

14 (3) For purposes of this section, "electronic smoking device" is as de-  
15 fined in section 39-5702(6), Idaho Code.

16 (4) The department may promulgate rules to implement the provisions of  
17 this section.

18 SECTION 3. That Section 63-2513, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 63-2513. ~~CONTRABAND ARTICLES~~ GOODS. (1) For purposes of this chapter,  
21 "contraband goods" means:

22 (a) Any unstamped cigarettes held, owned, possessed or in control of  
23 any person for a period of time longer than necessary to affix Idaho  
24 stamps, ~~are hereby declared to be contraband goods,~~ except as autho-  
25 rized under subsection (b) of section 63-2512, Idaho Code, ~~and; or~~

26 (b) Any tobacco products, as defined in section 63-2551, Idaho Code,  
27 held by, owned by, possessed by, or in control of any person upon which  
28 the tax imposed by this chapter has not been paid.

29 (2) Contraband goods may be seized by the ~~state tax~~ commission, or an  
30 employee of the ~~state tax~~ commission, or any peace officer, when directed by  
31 the ~~state tax~~ commission, without a warrant. Any vehicle, not a common car-  
32 rier operating in interstate commerce, used in violating this ~~act~~ chapter,  
33 shall likewise be subject to confiscation. Said ~~cigarettes~~ contraband goods  
34 or vehicles seized shall be offered for sale. Fifteen (15) days' notice of  
35 the sale shall be given; net proceeds from the sale shall be deposited in the  
36 general fund. The ~~state tax~~ commission shall require the purchaser at the  
37 sale to:

38 (a) Aaffix the proper amount of tax stamps to cigarette packages; or

39 (b) Collect and report the proper amount of tax with the commission.

40 SECTION 4. That Section 63-2514, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 63-2514. SEARCH AND SEIZURE. When the ~~state tax~~ commission has reason  
43 to believe that any ~~cigarettes~~ contraband goods are being kept, sold, of-  
44 fered for sale or given away in violation of this ~~act~~ chapter, an employee,  
45 delegate or deputy of the ~~state tax~~ commission, or any peace officer, may  
46 make affidavit of such fact, describing the place or thing to be searched,  
47 before a magistrate, or such official shall issue a search warrant directed

1 to the sheriff, constable, police officer, or employee, delegate, or deputy  
 2 of the ~~state tax~~ commission commanding him to search any place or vehicle  
 3 that may be designated in the affidavit and search warrant, and to seize any  
 4 ~~cigarettes contraband goods~~ so possessed as well as any article, machine or  
 5 vehicle wherein the same are found, kept or stored as contraband and to ar-  
 6 rest the person in control or possession thereof for violation of the provi-  
 7 sions of ~~section 63-2512, Idaho Code~~ this chapter.

8 SECTION 5. That Section 63-2515, Idaho Code, be, and the same is hereby  
 9 amended to read as follows:

10 63-2515. COMPROMISE AND CONFISCATION. When it is shown to the satis-  
 11 faction of the ~~state tax~~ commission that there was no intention to violate  
 12 any of the provisions of this ~~act~~ chapter, the commission may return any  
 13 property confiscated to the party and permit the party to affix the proper  
 14 amount of stamps to any cigarettes or collect and report the proper amount of  
 15 tax, provided additionally the party pays all costs incurred and a penalty of  
 16 twenty-five ~~per cent~~ percent (25%) of the amount of tax as well as interest  
 17 on the total value of the stamps required to be purchased or tax due at one  
 18 ~~per cent~~ percent (1%) for each month or portion thereof, from the date of the  
 19 initial incident or occurrence of violations.

20 SECTION 6. That Section 63-2551, Idaho Code, be, and the same is hereby  
 21 amended to read as follows:

22 63-2551. TOBACCO PRODUCTS TAX -- DEFINITIONS. As used in this ~~act~~  
 23 chapter:

24 (1) "Tobacco products" shall mean any cigars, cheroots, stogies,  
 25 smoking tobacco (including granulated, plug, cut, crimp-cut, ready-rubbed  
 26 and any other kinds and forms of tobacco suitable for smoking in a pipe or  
 27 cigarette), chewing tobacco (including ~~e~~Cavendish, twist, plug, scrap and  
 28 any other kinds and forms of tobacco suitable for chewing) and snuff, however  
 29 prepared; and liquids with any amount of nicotine for use in electronic smok-  
 30 ing devices, as defined in section 39-5702(6), Idaho Code; and shall include  
 31 any other articles or products made of tobacco except cigarettes;

32 (2) "Manufacturer" means a person who manufactures and sells tobacco  
 33 products;

34 (3) "Distributor" means (a) any person engaged in the business of sell-  
 35 ing tobacco products in this state who brings, or causes to be brought, into  
 36 this state from without the state any tobacco products for sale, (b) any per-  
 37 son who makes, manufactures, or fabricates tobacco products in this state  
 38 for sale in this state, (c) any person engaged in the business of selling to-  
 39 bacco products without this state who ships or transports tobacco products  
 40 to retailers in this state, to be sold by those retailers;

41 (4) "Subjobber" means any person, other than a manufacturer or distrib-  
 42 utor, who buys tobacco products from a distributor and sells them to persons  
 43 other than the ultimate consumers;

44 (5) "Retailer" means any person engaged in the business of selling to-  
 45 bacco products to ultimate consumers;

46 (6) "Sale" means any transfer, exchange, or barter, in any manner or by  
 47 any means whatsoever, for a consideration, and includes and means all sales

1 made by any person. It includes a gift by a person engaged in the business of  
 2 selling tobacco products, for advertising, as a means of evading the provi-  
 3 sions of this chapter, or for any other purposes whatsoever;

4 (7) "Wholesale sales price" means the established price for which a  
 5 manufacturer or any person sells a tobacco product to a distributor that is  
 6 not a related person as defined in section 267 of the Internal Revenue Code,  
 7 exclusive of any discount or other reduction;

8 (8) "Business" means any trade, occupation, activity, or enterprise  
 9 engaged in for the purpose of selling or distributing tobacco products in  
 10 this state;

11 (9) "Place of business" means any place where tobacco products are man-  
 12 ufactured, stored, or kept for the purpose of sale or consumption, including  
 13 any vessel, vehicle, airplane or train;

14 (10) "Retail outlet" means each place of business from which tobacco  
 15 products are sold to consumers;

16 (11) "Commission" means the Idaho state tax commission.

17 SECTION 7. That Section 63-2552A, Idaho Code, be, and the same is hereby  
 18 amended to read as follows:

19 63-2552A. ADDITIONAL TAX IMPOSED -- RATE. (1) In addition to the tax  
 20 imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there  
 21 is levied and there shall be collected an additional tax upon the sale, use,  
 22 consumption, handling, or distribution of all tobacco products in this state  
 23 at the rate of five percent (5%) of the wholesale sales price of such tobacco  
 24 products. Such tax shall be imposed at the time the distributor:

25 (a) Brings, or causes to be brought, into this state from without the  
 26 state tobacco products for sale;

27 (b) Makes, manufactures, or fabricates tobacco products in this state  
 28 for sale in this state; or

29 (c) Ships or transports tobacco products to retailers in this state to  
 30 be sold by those retailers.

31 (2) Each distributor, within twenty (20) days after July 1, 1994, shall  
 32 file a report with the commission, in such form as the commission may pre-  
 33 scribe, showing the tobacco products on hand on July 1, 1994, and the amount  
 34 of tax due thereon. The tax imposed in this subsection shall be due and  
 35 payable within twenty (20) days after July 1, 1994, and thereafter shall bear  
 36 interest at the rate of one percent (1%) per month.

37 (3) Of the tax collected pursuant to this section from liquid nicotine,  
 38 such funds shall be distributed to the electronic smoking device education  
 39 fund created in section 63-2552C, Idaho Code, and subject to appropriation  
 40 to fund the educational programs established in section 39-5719, Idaho Code,  
 41 distributed by the same formula used to appropriate general funds among the  
 42 public health districts established in chapter 4, title 39, Idaho Code, and  
 43 any surplus funds collected over the amount needed for the funding of such  
 44 programs shall be used for existing health care programs currently funded by  
 45 the general fund, subject to appropriation.

46 (4) Fifty percent (50%) of the tax collected pursuant to this section  
 47 shall be subject to appropriation to the public school income fund to be uti-  
 48 lized to develop and implement school safety improvements and to facilitate  
 49 and provide substance abuse prevention programs in the public school system

1 and the Idaho bureau of educational services for the deaf and the blind, less  
2 two hundred thousand dollars (\$200,000) that shall be remitted annually to  
3 the Idaho state police to increase toxicology lab capacity in the bureau of  
4 forensic services for drug testing of juveniles, and less eighty thousand  
5 dollars (\$80,000) that shall be remitted to the commission on Hispanic af-  
6 fairs to be used for substance abuse prevention efforts in collaboration  
7 with the state department of education. Fifty percent (50%) of the remainder  
8 of the tax collected pursuant to this section shall be subject to appropri-  
9 ation to the department of juvenile corrections for distribution quarterly  
10 to the counties to be utilized for county juvenile probation services, based  
11 upon the percentage the population of the county bears to the population of  
12 the state as a whole. The moneys remitted to the Idaho state police shall  
13 be reviewed annually and any money in excess to the operations needs of the  
14 laboratory for juvenile drug testing will be deposited in the public school  
15 income fund for substance abuse prevention programs in the public school  
16 system. The laboratory may utilize this increased toxicology capacity for  
17 adult drug testing to the extent that timely testing for juveniles is not  
18 adversely impacted.

19 SECTION 8. That Chapter 25, Title 63, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 63-2552C, Idaho Code, and to read as follows:

22 63-2552C. ELECTRONIC SMOKING DEVICE EDUCATION FUND. There is hereby  
23 created and established in the state treasury the electronic smoking device  
24 education fund. The fund shall consist of tax collected pursuant to section  
25 63-2552A, Idaho Code. Moneys in the electronic smoking device education  
26 fund are hereby continuously appropriated to be used solely to fund the edu-  
27 cational programs established in section 39-5719, Idaho Code, distributed  
28 by the same formula used to appropriate general funds among the public health  
29 districts established in chapter 4, title 39, Idaho Code, and any surplus  
30 funds collected over the amount needed for the funding of such programs shall  
31 be used for existing health care programs currently funded by the general  
32 fund, subject to appropriation.

33 SECTION 9. That Section 63-2554, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 63-2554. PERMIT REQUIRED. (1) No person shall engage in the business  
36 of a distributor or subjobber of tobacco products at any place of business  
37 without first having received from the commission a permit as provided in  
38 section 63-2503 or 63-2504, Idaho Code.

39 (2) The commission may revoke the permit of a person not actively en-  
40 gaged in activities requiring a permit under this chapter.

41 (3) Notice of revocation shall be given in the manner provided for defi-  
42 ciencies in taxes in section 63-3629, Idaho Code, which shall be subject to  
43 review as provided in section 63-3631, Idaho Code.

44 (4) A permit held by a person who for a period of twelve (12) consec-  
45 utive months files reports showing no tobacco products activity reportable  
46 under this chapter shall expire automatically upon the commission providing

1 notice of the expiration to the last known address of the person to whom the  
 2 permit was issued.

3 (5) A person who engaged in activities requiring a permit under this  
 4 section without a permit or after a permit has been revoked or suspended,  
 5 and any person who is a responsible person as described in section 63-3627,  
 6 Idaho Code, of such a business shall, after receiving written notice from the  
 7 commission, be subject to a civil penalty not to exceed one hundred dollars  
 8 (\$100). Each day shall constitute a separate offense that the commission may  
 9 assess as a deficiency pursuant to section 63-2563, Idaho Code.

10 SECTION 10. That Section 63-2564, Idaho Code, be, and the same is hereby  
 11 amended to read as follows:

12 63-2564. DISTRIBUTION OF TAX REVENUES. ~~(1)~~ The revenues received from  
 13 the taxes imposed by section 63-2552, Idaho Code, and any penalties, inter-  
 14 est, or deficiency additions, shall be distributed by the ~~tax~~ commission as  
 15 follows:

16 (a~~1~~) An amount of money shall be distributed to the state refund ac-  
 17 count, sufficient to pay current refund claims. All refunds authorized by  
 18 the commission shall be paid through the state refund account, and those mon-  
 19 eys are continuously appropriated.

20 (2) Of the tax collected pursuant to section 63-2552A, Idaho Code, from  
 21 liquid nicotine, after deducting the amount placed in the refund fund, such  
 22 funds shall be used to fund the educational programs established in section  
 23 39-5719, Idaho Code, distributed by the same formula used to appropriate  
 24 general funds among the public health districts established in chapter 4,  
 25 title 39, Idaho Code, and any surplus funds collected over the amount needed  
 26 for the funding of such programs shall be used for existing health care pro-  
 27 grams currently funded by the general fund, subject to appropriation.

28 (b~~3~~) From the balance remaining with the state treasurer after deduct-  
 29 ing the amounts in subsection (a~~1~~) of this section, all remaining moneys  
 30 shall be remitted directly to the general fund of the state of Idaho and shall  
 31 be remitted to that fund periodically, but no less frequently than quar-  
 32 terly.

33 SECTION 11. That Chapter 25, Title 63, Idaho Code, be, and the same is  
 34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 35 ignated as Section 63-2566, Idaho Code, and to read as follows:

36 63-2566. EXCHANGE OF INFORMATION AGREEMENTS. For the purpose of ad-  
 37 ministering the provisions of this chapter, the commission and the Idaho de-  
 38 partment of health and welfare may enter into such written agreements for the  
 39 exchange of information or delegation of authority, or both, as the commis-  
 40 sion and the department may find necessary to properly implement the intent  
 41 of the provisions of this chapter.