

IN THE SENATE

SENATE BILL NO. 1255

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO TOBACCO; AMENDING THE HEADING FOR CHAPTER 57, TITLE 39, IDAHO CODE; AMENDING SECTION 39-5701, IDAHO CODE, TO REVISE PROVISIONS REGARDING LEGISLATIVE FINDINGS AND INTENT; AMENDING SECTION 39-5702, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 39-5703, IDAHO CODE, TO REVISE THE LEGAL AGE FOR A PERSON TO POSSESS OR USE TOBACCO PRODUCTS OR ELECTRONIC CIGARETTES OR TO COMMIT OTHER ACTS RELATING TO TOBACCO PRODUCTS OR ELECTRONIC CIGARETTES; AMENDING SECTION 39-5704, IDAHO CODE, TO REVISE PROVISIONS REGARDING PERMITS; AMENDING SECTION 39-5705, IDAHO CODE, TO PROVIDE A PENALTY FOR SELLING, DISTRIBUTING OR OFFERING TOBACCO PRODUCTS OR ELECTRONIC CIGARETTES TO PERSONS UNDER A CERTAIN AGE; AMENDING SECTION 39-5706, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CERTAIN EXEMPTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5708, IDAHO CODE, TO REVISE PROVISIONS REGARDING CIVIL PENALTIES FOR CERTAIN VIOLATIONS; AMENDING SECTION 39-5709, IDAHO CODE, TO REVISE PROVISIONS REGARDING CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS; AMENDING SECTION 39-5710, IDAHO CODE, TO REVISE PROVISIONS REGARDING ENFORCEMENT ACTIONS; AMENDING SECTION 39-5711, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-5714, IDAHO CODE, TO REVISE PROVISIONS REGARDING REQUIREMENTS FOR DELIVERY SALES; AMENDING SECTION 39-5715, IDAHO CODE, TO REVISE PROVISIONS REGARDING AGE VERIFICATION REQUIREMENTS; AMENDING SECTION 39-5717, IDAHO CODE, TO REVISE PROVISIONS REGARDING SHIPPING REQUIREMENTS FOR TOBACCO PRODUCTS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-5717A, IDAHO CODE, TO REVISE PROVISIONS REGARDING SHIPPING REQUIREMENTS FOR ELECTRONIC CIGARETTES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-8421, IDAHO CODE, TO REVISE DEFINITIONS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-8423, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTIFICATION; AMENDING SECTION 39-8424, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 56-227F, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That the Heading for Chapter 57, Title 39, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 57  
PREVENTION OF ~~MINORS~~ YOUTH ACCESS TO TOBACCO

SECTION 2. That Section 39-5701, Idaho Code, be, and the same is hereby amended to read as follows:

39-5701. LEGISLATIVE FINDINGS AND INTENT. The prevention of youth access to tobacco products within the state of Idaho is hereby declared to be

1 a state goal to promote the general health and welfare of Idaho's young peo-  
2 ple. ~~Twenty-seven percent (27%) of Idaho's youth currently smoke and almost~~  
3 ~~twenty-seven percent (27%) of boys in Idaho use chewing tobacco which is sig-~~  
4 ~~nificantly higher than the national average.~~

5 ~~Tobacco use is the number one killer in a leading cause of preventable~~  
6 ~~death in Idaho causing more deaths by far than alcohol, illegal drugs, car~~  
7 ~~crashes, homicides, suicides, fires and AIDS combined and presents an ur-~~  
8 ~~gent public health challenge. Persons who start smoking at younger ages~~  
9 ~~are more likely to smoke as adults, and nearly ninety-five percent (95%) of~~  
10 ~~smokers start by the age of twenty-one (21) years. Smoking at early ages is~~  
11 ~~associated with greater risk of developing many adverse health conditions,~~  
12 ~~including respiratory disease, chronic obstructive pulmonary disease and~~  
13 ~~lung cancer. According to the center for disease control and prevention~~  
14 ~~(CDC), twenty-four thousand three hundred ninety-four (24,394) children in~~  
15 ~~Idaho currently under eighteen (18) years of age will die prematurely from~~  
16 ~~tobacco-related disease. Tobacco costs the state over two hundred forty~~  
17 ~~million dollars (\$240,000,000) each year and is the single most preventable~~  
18 ~~cause of death and disability in Idaho.~~

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

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

29 ~~Therefore, it is this state's policy to prevent the illegal sale, theft~~  
30 ~~and easy access of tobacco products to minors and persons under the age of~~  
31 ~~twenty-one (21) years, to prohibit the possession, distribution and use of~~  
32 ~~tobacco products by minors such persons and to punish those who disregard~~  
33 ~~this law.~~

34 SECTION 3. That Section 39-5702, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 39-5702. DEFINITIONS. The terms used in this chapter are defined as  
37 follows:

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

41 (2) "Delivery sale" means to distribute tobacco products or electronic  
42 cigarettes to a consumer in a state where either: (a) the individual sub-  
43 mits the order for such sale by means of a telephonic or other method of voice  
44 transmission, data transfer via computer networks, including the internet  
45 and other online services, or facsimile, or the mails; or (b) the tobacco  
46 products or electronic cigarettes are delivered by use of the mails or a de-  
47 livery service.

48 (3) "Delivery service" means any person who is engaged in the commer-  
49 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 ~~(8) "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, is~~  
15 ~~exempt from inspections assisted by a minor, if minors are not allowed in the~~  
16 ~~location and such prohibition is posted clearly on all entrance doors.~~

17 ~~(9) "Permit" means a permit issued by the department for the sale or~~  
18 ~~distribution of tobacco products.~~

19 ~~(108) "Permittee" means the holder of a valid permit for the sale or~~  
20 ~~distribution of tobacco products.~~

21 ~~(119) "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 ~~(120) "Random unannounced inspection" means an inspection of retail~~  
26 ~~outlets by a law enforcement agency or by the department, with or without~~  
27 ~~the assistance of a minor person under the age of twenty-one (21) years, to~~  
28 ~~monitor compliance of this chapter.~~

29 ~~(131) "Seller" means the person who physically sells or distributes to-~~  
30 ~~bacco products or electronic cigarettes.~~

31 ~~(142) "Tobacco product" means any substance that contains tobacco in-~~  
32 ~~cluding, but not limited to, cigarettes, cigars, pipes, snuff, smoking to-~~  
33 ~~bacco, tobacco papers or smokeless tobacco.~~

34 ~~(153) "Vending machine" means any mechanical, electronic or other sim-~~  
35 ~~ilar device which, upon the insertion of tokens, money or any other form of~~  
36 ~~payment, dispenses tobacco products or electronic cigarettes.~~

37 ~~(164) "Vendor assisted sales" means any sale or distribution in which~~  
38 ~~the customer has no access to the product except through the assistance of~~  
39 ~~the seller.~~

40 ~~(175) "Without a permit" means a business that has failed to obtain a~~  
41 ~~permit or a business whose permit is suspended or revoked.~~

42 ~~(16) "Youth exempt permit" means a permittee location, whose revenues~~  
43 ~~from the sale of alcoholic beverages for on-site consumption comprise at~~  
44 ~~least fifty-five percent (55%) of total revenues, or whose products and~~  
45 ~~services are primarily obscene, pornographic, profane or sexually ori-~~  
46 ~~ented, that is exempt from inspections assisted by a person under the age of~~  
47 ~~twenty-one (21) years, if such persons are not allowed in the location and~~  
48 ~~such prohibition is posted clearly on all entrance doors.~~

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

1           39-5703. POSSESSION, DISTRIBUTION OR USE BY A MINOR PERSON UNDER AGE  
2 TWENTY-ONE YEARS. (1) It shall be unlawful for a ~~minor~~ person under the age of  
3 twenty-one (21) years to possess, receive, purchase, use or consume tobacco  
4 products or electronic cigarettes or to attempt any of the foregoing.

5           (2) It shall be unlawful for a ~~minor~~ person under the age of twenty-one  
6 (21) years to sell or distribute tobacco products or electronic cigarettes  
7 or to attempt either of the foregoing, except as provided in subsection (5)  
8 of this section.

9           (3) It shall be unlawful for a ~~minor~~ persons under the age of twenty-  
10 one (21) years to provide false identification, or make any false statement  
11 regarding their age in an attempt to obtain tobacco products or electronic  
12 cigarettes.

13           (4) A ~~minor~~ person under the age of twenty-one (21) years who is as-  
14 sisting with a random unannounced inspection in accordance with this chapter  
15 shall not be in violation of this chapter.

16           (5) A ~~minor~~ person under the age of eighteen (18) years may possess  
17 but not sell or distribute tobacco products or electronic cigarettes in the  
18 course of employment, for duties such as stocking shelves or carrying pur-  
19 chases to customers' vehicles. A person who is eighteen (18), nineteen (19)  
20 or twenty (20) years of age may possess, sell or distribute tobacco products  
21 or electronic cigarettes in the course of employment.

22           (6) Penalties for violations by a ~~minor~~ person under the age of twenty-  
23 one (21) years. A violation of subsection (1) of this section ~~by a minor~~  
24 shall constitute an infraction and shall be punishable by a fine of seven-  
25 teen dollars and fifty cents (\$17.50). The first violation of subsection (2)  
26 or (3) of this section ~~by a minor~~ shall constitute an infraction and shall be  
27 punishable by a fine of two hundred dollars (\$200). A subsequent violation  
28 of subsection (2) or (3) of this section ~~by a minor~~ shall constitute a mis-  
29 demeanor and shall be punishable by imprisonment in an appropriate facility  
30 not exceeding thirty (30) days, a fine not exceeding three hundred dollars  
31 (\$300), or both such fine and imprisonment. The court may, in addition to the  
32 penalties provided herein in this section, require the minor a person who vi-  
33 olates this section and the minor's such person's parents or legal guardian,  
34 if the person is under eighteen (18) years of age, to attend tobacco aware-  
35 ness programs or to perform community service in programs related to tobacco  
36 awareness.

37           SECTION 5. That Section 39-5704, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39           39-5704. PERMITTING OF TOBACCO PRODUCT RETAILERS. (1) It shall be un-  
40 lawful to sell or distribute or offer tobacco products for sale or distri-  
41 bution at retail or to possess tobacco products with the intention of sell-  
42 ing at retail without having first obtained a tobacco permit from the depart-  
43 ment which shall be the only retail tobacco permit or license required. Pro-  
44 vided however, this section shall not be deemed to require a wholesaler or  
45 manufacturer's representative or their employees who, in the course of their  
46 employment, stock shelves and replenish tobacco products at a permittee's  
47 place of business to obtain a permit.

48           (2) The department shall administer the permitting of tobacco product  
49 retailers and shall be authorized to ensure compliance with this chapter.

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

5 (3) Permits shall be issued annually for no charge for each business lo-  
6 cation to ensure compliance with the requirements of this chapter. A copy  
7 of this chapter, rules adopted by the department, appropriate signage re-  
8 quired by this chapter and any materials deemed necessary shall be provided  
9 with each permit issued.

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

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

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

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

24 (8) It shall be unlawful for the permittee to allow employees who are  
25 minors under the age of eighteen (18) years to sell or distribute tobacco.  
26 ~~Exception: E, but such employees who are minors may possess but not sell or~~  
27 ~~distribute tobacco products in the course of employment, for such duties as~~  
28 ~~stocking shelves or carrying purchases to customers' vehicles.~~

29 SECTION 6. That Section 39-5705, Idaho Code, be, and the same is hereby  
30 amended to read as follows:

31 39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS AND ELECTRONIC CIG-  
32 ARETTES TO A MINOR PERSON UNDER THE AGE OF TWENTY-ONE YEARS. (1) It shall be  
33 unlawful to sell, distribute or offer tobacco products or electronic ciga-  
34 rettes to a minor person under the age of twenty-one (21) years. A person who  
35 violates this subsection shall be guilty of a misdemeanor and may be punished  
36 by a fine of not less than five hundred dollars (\$500) nor more than one thou-  
37 sand dollars (\$1,000) per violation, or by imprisonment in the county jail  
38 for a period not to exceed one (1) year, or by both such fine and imprison-  
39 ment. A second or subsequent violation of this subsection by the same defen-  
40 dant shall be a misdemeanor and may be punished by a fine of not less than one  
41 thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) per  
42 violation, or by imprisonment in the county jail for a period not to exceed  
43 one (1) year, or by both such fine and imprisonment.

44 (2) It shall be an affirmative defense that the seller of a tobacco  
45 product or an electronic cigarette to a minor person under the age of  
46 twenty-one (21) years in violation of this section had requested, examined  
47 and reasonably relied upon a photographic identification from such per-  
48 son establishing that person's age as at least ~~eighteen~~ twenty-one (21)  
49 years of age prior to selling such person a tobacco product or an electronic

1 cigarette. The failure of a seller to request and examine photographic iden-  
 2 tification from a person under ~~eighteen~~ twenty-one (21) years of age prior  
 3 to the sale of a tobacco product or an electronic cigarette to such person  
 4 shall be construed against the seller and form a conclusive basis for the  
 5 seller's violation of this section.

6 SECTION 7. That Section 39-5706, Idaho Code, be, and the same is hereby  
 7 amended to read as follows:

8 39-5706. VENDOR-ASSISTED SALES. (1) It shall be unlawful to sell or  
 9 distribute tobacco products or electronic cigarettes by any means other than  
 10 vendor-assisted sales where the customer has no access to the product except  
 11 through the assistance of the seller.

12 (2) On and after January 1, 2000, it shall be unlawful to sell or dis-  
 13 tribute tobacco products from a vending machine.

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

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

18 (5) Stores with tobacco products comprising at least seventy-five per-  
 19 cent (75%) of total merchandise are exempt from requiring vendor-assisted  
 20 sales, if ~~minors~~ persons under the age of twenty-one (21) years are not al-  
 21 lowed in the store and such prohibition is posted clearly on all entrance  
 22 doors.

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

25 39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT -- CIVIL PENALTY FOR  
 26 VIOLATIONS RELATING TO ELECTRONIC CIGARETTES. (1) Any permittee who fails  
 27 to comply with any part of this chapter, or any current state or local law  
 28 or rule or regulation regarding the sale or distribution of tobacco products  
 29 shall be subject to a civil penalty as provided in this section or have ~~their~~  
 30 the permit suspended, pursuant to compliance with the contested case provi-  
 31 sions of the Idaho administrative procedure act, chapter 52, title 67, Idaho  
 32 Code, or both.

33 (2) If a seller who is not a permittee violates section 39-5705, Idaho  
 34 Code, and sells or distributes tobacco products or electronic cigarettes to  
 35 a ~~minor~~ person under the age of twenty-one (21) years, then the seller shall  
 36 be fined one hundred dollars (\$100).

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

39 (4) In the case of a second violation, the permittee shall be fined two  
 40 hundred dollars (\$200) and shall be notified in writing of penalties to be  
 41 levied for further violations. For a violation of section 39-5705, Idaho  
 42 Code, the permittee shall not be fined if the permittee can show that a train-  
 43 ing program was in place for the employee and that the permittee has a form  
 44 signed by that employee on file stating that ~~they~~ the permittee understands  
 45 the tobacco laws dealing with ~~minors~~ persons under the age of twenty-one (21)  
 46 years and the unlawful purchase of tobacco, but the permittee shall be noti-  
 47 fied in writing of penalties to be levied for any further violations. If no

1 such training is in place, the permittee shall be fined two hundred dollars  
2 (\$200).

3 (5) In the case of a third violation in a two (2) year period, the per-  
4 mittee shall be fined two hundred dollars (\$200) and the permit may be sus-  
5 pended for up to seven (7) days. If the violation is by an employee, at the  
6 same location, who was involved in any previous citation for violation, the  
7 permittee shall be fined four hundred dollars (\$400). Effective training  
8 and employment practices by the permittee, as determined by the department,  
9 shall be a mitigating factor in determining permit suspension. Tobacco re-  
10 tailers must remove all tobacco products from all areas accessible to or vis-  
11 ible to the public while the permit is suspended.

12 (6) In the case of four (4) or more violations within a two (2) year pe-  
13 riod, the permittee shall be fined four hundred dollars (\$400) and the permit  
14 shall be revoked until such time that the permittee demonstrates an effec-  
15 tive training plan to the department, but in no case shall the revocation be  
16 for less than thirty (30) days. Tobacco retailers must remove all tobacco  
17 products from all areas accessible to or visible to the public while the per-  
18 mit is revoked.

19 (7) All moneys collected for violations pursuant to this section shall  
20 be remitted to the prevention of ~~minors'~~ youth access to tobacco fund created  
21 in section 39-5711, Idaho Code.

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

24 39-5709. CRIMINAL PENALTIES FOR VIOLATIONS WITHOUT A PERMIT. Sale or  
25 distribution of tobacco products without a permit, or any violation of this  
26 chapter, ~~without a permit~~ is considered by the state of Idaho as an effort  
27 to subvert the state's public purpose to prevent ~~minor's~~ access to tobacco  
28 products by persons under the age of twenty-one (21) years.

29 (1) The sale or distribution of tobacco products without a permit shall  
30 constitute a misdemeanor punishable by imprisonment not exceeding six (6)  
31 months in the county jail, a fine of three hundred dollars (\$300), or by both  
32 such fine and imprisonment. If the sale or distribution of tobacco products  
33 was to a ~~minor~~ person under the age of twenty-one (21) years, the fine shall  
34 be no less than five hundred dollars (\$500) nor more than one thousand dol-  
35 lars (\$1,000). The provisions of this section shall not be applicable to an  
36 employee of the business engaged in the sale of tobacco products if the sale  
37 occurred during the course of such employment and the seller does not have an  
38 ownership interest in the business.

39 (2) In addition to the penalties set forth in subsection (1) of this  
40 section, the court may impose an additional fine of one thousand dollars  
41 (\$1,000) per day beginning the day following the date of citation as long  
42 as the illegal tobacco sales or distribution continues. The first seven  
43 (7) days of additional fines may be suspended provided that the business or  
44 seller is able to prove that the business or seller has applied for the permit  
45 within seven (7) days of the citation.

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

1 39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the  
 2 legislature that law enforcement agencies, the attorney general, and the de-  
 3 partment shall enforce this chapter and rules promulgated pursuant thereto  
 4 in a manner that can reasonably be expected to significantly reduce the ex-  
 5 tent to which tobacco products and electronic cigarettes are sold or dis-  
 6 tributed to ~~minors~~ persons under the age of twenty-one (21) years.

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

11 (3) The department shall conduct at least one (1) random, unannounced  
 12 inspection per year at all locations where tobacco products are sold or dis-  
 13 tributed at retail to ensure compliance with this chapter. The department  
 14 shall conduct inspections for ~~minor~~ youth exempt permittees without the as-  
 15 sistance of a ~~minor~~ person under the age of twenty-one (21) years. The de-  
 16 partment shall conduct inspections for all other permittees with the assis-  
 17 tance of a ~~minor~~ person under the age of twenty-one (21) years. Each year the  
 18 department shall conduct random unannounced inspections equal to the num-  
 19 ber of permittees multiplied by the violation percentage rate reported for  
 20 the previous year multiplied by a factor of ten (10). Local law enforcement  
 21 agencies are encouraged to contract with the department to perform these re-  
 22 quired inspections.

23 (4) ~~Minors~~ Persons under the age of twenty-one (21) years may assist  
 24 with random, unannounced inspections; provided however, that a person un-  
 25 der the age of eighteen (18) years may do so only with the written consent of  
 26 a parent or legal guardian. When assisting with these inspections, ~~minors~~  
 27 persons under the age of twenty-one (21) years shall not provide false iden-  
 28 tification, nor make any false 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. ~~section~~ 5712~~7~~ may file written complaints relating to  
 32 delivery sales to the department or the attorney general's offices. Com-  
 33 plaints shall 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,~~ the attorney general's designee, or  
 38 any person who holds a permit under 26 U.S.C. ~~section~~ 5712~~7~~ may bring an ac-  
 39 tion in district court in Idaho to prevent or restrain violations of this  
 40 chapter by any person or by any person controlling such person.

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

43 39-5711. FUNDING AND CREATION OF PREVENTION OF ~~MINORS'~~ YOUTH ACCESS TO  
 44 TOBACCO FUND. There is hereby created the prevention of ~~minors'~~ youth access  
 45 to tobacco fund in the state treasury. Moneys in the fund shall be used to  
 46 fund the administration, inspections and enforcement of this chapter. Mon-  
 47 eys in the fund may be expended only pursuant to appropriation. The fund  
 48 shall consist of:



1 (1) The current federal funds that are available for inspections or for  
2 the prevention of ~~minor's~~ youth access to tobacco shall be utilized by the  
3 department;

4 (2) The fines from the civil penalties pursuant to section 39-5708,  
5 Idaho Code;

6 (3) Moneys from any other source.

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

9 39-5714. REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall  
10 make a delivery sale of tobacco products to any individual who is under age  
11 ~~eighteen~~ twenty-one (~~18~~21) years in this state. No seller shall make a de-  
12 livery sale of electronic cigarettes to any ~~minor~~ person under the age of  
13 twenty-one (21) years in this state.

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

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

26 39-5715. AGE VERIFICATION REQUIREMENTS. (1) No permittee shall mail  
27 or ship tobacco products in connection with a delivery sale order unless, be-  
28 fore mailing or shipping such tobacco products, the permittee accepting the  
29 delivery sale order first obtains from the prospective customer a certifi-  
30 cation that includes proof of age that the purchaser is at least ~~eighteen~~  
31 twenty-one (~~18~~21) years old, the credit or debit card used for payment has  
32 been issued in the purchaser's name and the address to which the cigarettes  
33 are being shipped matches the credit card company's address for the card-  
34 holder.

35 (2) No seller shall mail or ship an electronic cigarette in connection  
36 with a delivery sale order unless, before mailing or shipping such elec-  
37 tronic cigarette, the seller accepting the delivery sale order first obtains  
38 from the prospective customer a certification that includes proof of age  
39 that the purchaser is at least ~~eighteen~~ twenty-one (~~18~~21) years old, the  
40 credit or debit card used for payment has been issued in the purchaser's name  
41 and the address to which the electronic cigarette is being shipped matches  
42 the credit or debit card company's address for the cardholder.

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

1 39-5717. SHIPPING REQUIREMENTS -- TOBACCO PRODUCTS. Each permittee  
2 who mails or ships tobacco products in connection with a delivery sale or-  
3 der shall include as part of the shipping documents a clear and conspicuous  
4 statement providing as follows:

5 "TOBACCO PRODUCTS: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS UN-  
6 DER THE AGE OF ~~EIGHTEEN~~ TWENTY-ONE YEARS, AND REQUIRES THE PAYMENT  
7 OF TAXES PURSUANT TO CHAPTER 25, TITLE 63, IDAHO CODE. PERSONS VIO-  
8 LATING THIS MAY BE CIVILLY AND CRIMINALLY LIABLE."

9 Anyone delivering any such container distributes tobacco products as  
10 defined in section 39-5702(5), Idaho Code, and is subject to the terms and  
11 requirements of this chapter. If a permittee taking a delivery sale order  
12 also delivers the tobacco products without using a third party delivery  
13 service, the permittee shall comply with all the requirements of vendor as-  
14 sisted sales as defined in section 39-5702(164), Idaho Code.

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

17 39-5717A. SHIPPING REQUIREMENTS -- ELECTRONIC CIGARETTES. Each  
18 seller who mails or ships electronic cigarettes in connection with a deliv-  
19 ery sale order shall include as part of the shipping documents a clear and  
20 conspicuous statement providing as follows:

21 "ELECTRONIC CIGARETTES: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDU-  
22 ALS UNDER THE AGE OF ~~EIGHTEEN~~ TWENTY-ONE YEARS. PERSONS VIOLATING  
23 THIS MAY BE CIVILLY LIABLE."

24 If a seller taking a delivery sale order also delivers the electronic  
25 cigarettes without using a third party delivery service, the seller shall  
26 comply with all the requirements of vendor-assisted sales.

27 SECTION 16. That Section 39-8421, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 39-8421. DEFINITIONS. As used in sections 39-8420 through 39-8425,  
30 Idaho Code:

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

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

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

43 (4) ~~"Minor" has the same meaning as that term is defined in section~~  
44 ~~39-5702(6), Idaho Code, of the Idaho prevention of minors' access to tobacco~~  
45 ~~act.~~

46 (5) "Person" means natural persons, corporations both foreign and do-  
47 mestic, trusts, partnerships both limited and general, incorporated or un-

1 incorporated associations, companies, business entities, and any other le-  
 2 gal entity, or any other group associated in fact although not a legal en-  
 3 tity.

4 (65) "Tobacco products" has the same meaning as that term is defined in  
 5 section 39-5702(132), Idaho Code, of the Idaho prevention of ~~minors'~~ youth  
 6 access to tobacco act.

7 SECTION 17. That Section 39-8423, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

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

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

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

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

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

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

34 (ii) The location where the cigarette rolling machine is situated  
 35 prohibits ~~minors~~ persons under the age of twenty-one (21) years  
 36 from entering the premises;

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

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

48 (2) After being certified, the cigarette rolling machine operator  
 49 shall annually certify, under penalty of perjury, to the provisions set

1 forth in subsection (1) of this section. Additionally, the operator shall  
2 quarterly report to the attorney general on a form prescribed by the attorney  
3 general:

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

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

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

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

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

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

23 SECTION 18. That Section 39-8424, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (e) To purchase cigarettes as defined in section 39-7802(d), Idaho  
 34 Code, or tobacco products as defined in section 39-5702(132), Idaho  
 35 Code;

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

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

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

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

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

46 (b) State liquor stores defined under section 23-902, Idaho Code, with  
 47 the exception of special distributors as referenced in chapter 3, title  
 48 23, Idaho Code;

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

3 (d) Gambling establishments licensed under Idaho law;

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

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

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

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

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

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

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

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

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

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