

IN THE SENATE

SENATE BILL NO. 1308

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES; AMENDING SECTION
2 39-5701, IDAHO CODE, TO REVISE LEGISLATIVE FINDINGS AND INTENT; AMEND-
3 ING SECTION 39-5702, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE
4 A TERM; AMENDING SECTION 39-5703, IDAHO CODE, TO PROVIDE CERTAIN PRO-
5 HIBITIONS FOR YOUNG ADULTS, TO PROVIDE FOR ASSISTANCE BY YOUNG ADULTS
6 IN UNANNOUNCED INSPECTIONS, TO PROVIDE THAT A YOUNG ADULT MAY SELL AND
7 DISTRIBUTE TOBACCO PRODUCTS OR ELECTRONIC CIGARETTES, AND TO APPLY
8 CERTAIN PENALTIES TO YOUNG ADULTS; AMENDING SECTION 39-5704, IDAHO
9 CODE, TO REVISE PROVISIONS REGARDING A CERTAIN SIGN AND TO PROVIDE THAT
10 YOUNG ADULTS MAY SELL OR DISTRIBUTE TOBACCO PRODUCTS; AMENDING SECTION
11 39-5705, IDAHO CODE, TO PROHIBIT THE SALE, DISTRIBUTION, OR OFFER OF
12 TOBACCO PRODUCTS OR ELECTRONIC CIGARETTES TO YOUNG ADULTS AND TO PRO-
13 VIDE AN AFFIRMATIVE DEFENSE; AMENDING SECTION 39-5706, IDAHO CODE, TO
14 REVISE PROVISIONS REGARDING VENDOR-ASSISTED SALES; AMENDING SECTION
15 39-5708, IDAHO CODE, TO REVISE PROVISIONS REGARDING CIVIL PENALTIES;
16 AMENDING SECTION 39-5709, IDAHO CODE, TO REVISE PROVISIONS REGARDING
17 CRIMINAL PENALTIES; AMENDING SECTION 39-5710, IDAHO CODE, TO REVISE
18 PROVISIONS REGARDING CONDUCT OF ENFORCEMENT ACTIONS; AMENDING SECTION
19 39-5711, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE PREVENTION
20 OF MINORS' ACCESS TO TOBACCO FUND; AMENDING SECTION 39-5714, IDAHO
21 CODE, TO PROHIBIT DELIVERY SALES OF TOBACCO PRODUCTS OR ELECTRONIC
22 CIGARETTES TO YOUNG ADULTS; AMENDING SECTION 39-5715, IDAHO CODE, TO
23 REVISE PROVISIONS REGARDING AGE VERIFICATION REQUIREMENTS; AMENDING
24 SECTION 39-5717, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CERTAIN
25 STATEMENT; AMENDING SECTION 39-5717A, IDAHO CODE, TO REVISE PROVISIONS
26 REGARDING A CERTAIN STATEMENT; AMENDING THE HEADING FOR CHAPTER 57,
27 TITLE 39, IDAHO CODE; AMENDING SECTION 39-8421, IDAHO CODE, TO REMOVE
28 REFERENCES TO AN ACT; AMENDING SECTION 39-8423, IDAHO CODE, TO REMOVE
29 A REFERENCE TO AN ACT AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING
30 SECTION 39-8424, IDAHO CODE, TO REMOVE A REFERENCE TO AN ACT AND TO PRO-
31 VIDE A CODE REFERENCE.
32

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

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

36 39-5701. LEGISLATIVE FINDINGS AND INTENT. The prevention of youth ac-
37 cess to tobacco products within the state of Idaho is hereby declared to be
38 a state goal to promote the general health and welfare of Idaho's young peo-
39 ple. Twenty-seven percent (27%) of Idaho's youth currently smoke and almost
40 twenty-seven percent (27%) of boys in Idaho use chewing tobacco, which is
41 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 centers 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 nors 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 Therefore, it is this state's policy to prevent the illegal sale, theft,
20 and easy access of tobacco products to minors and young adults and to pro-
21 hibit the possession, distribution, and use of tobacco products by minors
22 and young adults and to punish those who disregard this law.

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

25 39-5702. DEFINITIONS. The terms used in this chapter are defined as
26 follows:

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

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

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

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

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

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

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

1 (8) "Minor exempt permit" means a permittee location whose revenues
 2 from the sale of alcoholic beverages for on-site consumption comprises at
 3 least fifty-five percent (55%) of total revenues, or whose products and ser-
 4 vices are primarily obscene, pornographic, profane, or sexually oriented,
 5 is exempt from inspections assisted by a minor or young adult, if minors and
 6 young adults are not allowed in the location and such prohibition is posted
 7 clearly on all entrance doors.

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

10 (10) "Permittee" means the holder of a valid permit for the sale or dis-
 11 tribution of tobacco products.

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

16 (12) "Random unannounced inspection" means an inspection of retail out-
 17 lets by a law enforcement agency or by the department, with or without the as-
 18 sistance of a minor or young adult, to monitor compliance of this chapter.

19 (13) "Seller" means the person who physically sells or distributes to-
 20 bacco products or electronic cigarettes.

21 (14) "Tobacco product" means any substance that contains tobacco in-
 22 cluding, but not limited to, cigarettes, cigars, pipes, snuff, smoking
 23 tobacco, tobacco papers or smokeless tobacco.

24 (15) "Vending machine" means any mechanical, electronic or other simi-
 25 lar device which, upon the insertion of tokens, money or any other form of
 26 payment, dispenses tobacco products or electronic cigarettes.

27 (16) "Vendor-assisted sales" means any sale or distribution in which
 28 the customer has no access to the product except through the assistance of
 29 the seller.

30 (17) "Without a permit" means a business that has failed to obtain a per-
 31 mit or a business whose permit is suspended or revoked.

32 (18) "Young adult" means a person who is eighteen (18) through twenty
 33 (20) years of age.

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

36 39-5703. POSSESSION, DISTRIBUTION, OR USE BY A MINOR OR YOUNG
 37 ADULT. (1) It shall be unlawful for a minor or young adult to possess, re-
 38 ceive, purchase, use, or consume tobacco products or electronic cigarettes
 39 or to attempt any of the foregoing.

40 (2) It shall be unlawful for a minor to sell or distribute tobacco prod-
 41 ucts or electronic cigarettes or to attempt either of the foregoing.

42 (3) It shall be unlawful for a ~~minor~~ minors or young adults to provide false
 43 identification, or make any false statement regarding their age in an at-
 44 tempt to obtain tobacco products or electronic cigarettes.

45 (4) A minor or young adult who is assisting with a random unannounced
 46 inspection in accordance with this chapter shall not be in violation of this
 47 chapter.

48 (5) A minor may possess but not sell or distribute tobacco products or
 49 electronic cigarettes in the course of employment, for duties such as stock-

1 ing shelves or carrying purchases to customers' vehicles. Young adults may
 2 sell and distribute tobacco products or electronic cigarettes in the course
 3 and scope of their employment.

4 (6) Penalties for violations by a minor or young adult. A violation of
 5 subsection (1) of this section by a minor or young adult shall constitute an
 6 infraction and shall be punishable by a fine of seventeen dollars and fifty
 7 cents (\$17.50). The first violation of subsection (2) or (3) of this section
 8 by a minor or young adult shall constitute an infraction and shall be pun-
 9 ishable by a fine of two hundred dollars (\$200). A subsequent violation of
 10 subsection (2) or (3) of this section by a minor or young adult shall consti-
 11 tute a misdemeanor and shall be punishable by imprisonment in an appropriate
 12 facility not exceeding thirty (30) days, a fine not exceeding three hundred
 13 dollars (\$300), or both such fine and imprisonment. The court may, in addi-
 14 tion to the penalties provided herein, require the minor or young adult and
 15 the minor's parents or legal guardian to attend tobacco awareness programs
 16 or to perform community service in programs related to tobacco awareness.

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

19 39-5704. PERMITTING OF TOBACCO PRODUCT RETAILERS. (1) It shall be un-
 20 lawful to sell or distribute or offer tobacco products for sale or distri-
 21 bution at retail or to possess tobacco products with the intention of sell-
 22 ing at retail without having first obtained a tobacco permit from the de-
 23 partment, which shall be the only retail tobacco permit or license required.
 24 Provided however, this section shall not be deemed to require a wholesaler or
 25 manufacturer's representative or their employees who, in the course of their
 26 employment, stock shelves and replenish tobacco products at a permittee's
 27 place of business to obtain a permit.

28 (2) The department shall administer the permitting of tobacco product
 29 retailers and shall be authorized to ensure compliance with this chapter.
 30 The department may promulgate rules in compliance with chapter 52, title 67,
 31 Idaho Code, regarding permitting of tobacco product retailers, inspections,
 32 and compliance checks, effective training and employment practices under
 33 this chapter.

34 (3) Permits shall be issued annually for no charge for each business lo-
 35 cation to ensure compliance with the requirements of this chapter. A copy of
 36 this chapter, rules adopted by the department, appropriate signage required
 37 by this chapter, and any materials deemed necessary shall be provided with
 38 each permit issued.

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

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

42 (6) A permittee may display a sign in each location within a place
 43 of business where tobacco products are sold or distributed. A sign may be
 44 clearly visible to the customer and the seller and shall state:

45 "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER
 46 THE AGE OF ~~EIGHTEEN (18)~~ TWENTY-ONE (21) YEARS. PROOF OF AGE RE-
 47 QUIRED. ANYONE WHO SELLS OR DISTRIBUTES TOBACCO TO A MINOR OR YOUNG
 48 ADULT IS SUBJECT TO STRICT FINES AND PENALTIES. MINORS AND YOUNG
 49 ADULTS ARE SUBJECT TO FINES AND PENALTIES."

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

3 (8) It shall be unlawful for the permittee to allow employees who are
4 minors to sell or distribute tobacco. Exception: Employees who are minors
5 may possess but not sell or distribute tobacco products in the course of em-
6 ployment, for such duties as stocking shelves or carrying purchases to cus-
7 tomers' vehicles. Employees who are young adults may sell or distribute to-
8 bacco products in the course and scope of their employment.

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

11 39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS AND ELECTRONIC CIG-
12 ARETTES TO A MINOR OR YOUNG ADULT. (1) It shall be unlawful to sell, distrib-
13 ute, or offer tobacco products or electronic cigarettes to a minor or young
14 adult.

15 (2) It shall be an affirmative defense that the seller of a tobacco
16 product or an electronic cigarette to a minor or young adult in violation of
17 this section had requested, examined, and reasonably relied upon a photo-
18 graphic identification from such person establishing that person's age as at
19 least ~~eighteen (18)~~ twenty-one (21) years of age prior to selling such person
20 a tobacco product or an electronic cigarette. The failure of a seller to re-
21 quest and examine photographic identification from a person under ~~eighteen~~
22 ~~(18)~~ twenty-one (21) years of age prior to the sale of a tobacco product or
23 an electronic cigarette to such person shall be construed against the seller
24 and form a conclusive basis for the seller's violation of this section.

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

27 39-5706. VENDOR-ASSISTED SALES. (1) It shall be unlawful to sell or
28 distribute tobacco products or electronic cigarettes by any means other than
29 vendor-assisted sales where the customer has no access to the product except
30 through the assistance of the seller.

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

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

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

37 (5) Stores with tobacco products comprising at least seventy-five per-
38 cent (75%) of total merchandise are exempt from requiring vendor-assisted
39 sales, if minors or young adults are not allowed in the store and such prohi-
40 bition is posted clearly on all entrance doors.

41 SECTION 7. That Section 39-5708, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT -- CIVIL PENALTY FOR
44 VIOLATIONS RELATING TO ELECTRONIC CIGARETTES. (1) Any permittee who fails to
45 comply with any part of this chapter, or any current state or local law or

1 rule or regulation regarding the sale or distribution of tobacco products,
2 shall be subject to a civil penalty as provided in this section or have their
3 permit suspended, pursuant to compliance with the contested case provisions
4 of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code,
5 or both.

6 (2) If a seller who is not a permittee violates section 39-5705, Idaho
7 Code, and sells or distributes tobacco products or electronic cigarettes to
8 a minor or young adult, then the seller shall be fined one hundred dollars
9 (\$100).

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

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

22 (5) In the case of a third violation in a two (2) year period, the per-
23 mittee shall be fined two hundred dollars (\$200) and the permit may be sus-
24 pended for up to seven (7) days. If the violation is by an employee, at the
25 same location, who was involved in any previous citation for violation, the
26 permittee shall be fined four hundred dollars (\$400). Effective training
27 and employment practices by the permittee, as determined by the department,
28 shall be a mitigating factor in determining permit suspension. Tobacco re-
29 tailers must remove all tobacco products from all areas accessible to or vis-
30 ible to 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 retailers must remove all tobacco
36 products from all areas accessible to or visible to the public while the per-
37 mit is revoked.

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

41 SECTION 8. That Section 39-5709, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 39-5709. CRIMINAL PENALTIES FOR VIOLATIONS WITHOUT A PERMIT. Sale or
44 distribution of tobacco products, or any violation of this chapter, with-
45 out a permit is considered by the state of Idaho as an effort to subvert the
46 state's public purpose to prevent minor-s and young adults' access to to-
47 bacco products.

48 (1) The sale or distribution of tobacco products without a permit shall
49 constitute a misdemeanor punishable by imprisonment not exceeding six (6)

1 months in the county jail, a fine of three hundred dollars (\$300), or by both
2 such fine and imprisonment. If the sale or distribution of tobacco products
3 was to a minor or young adult, the fine shall be no less than five hundred dol-
4 lars (\$500) nor more than one thousand dollars (\$1,000). The provisions of
5 this section shall not be applicable to an employee of the business engaged
6 in the sale of tobacco products if the sale occurred during the course of such
7 employment and the seller does not have an ownership interest in the busi-
8 ness.

9 (2) In addition to the penalties set forth in subsection (1) of this
10 section, the court may impose an additional fine of one thousand dollars
11 (\$1,000) per day beginning the day following the date of citation as long as
12 the illegal tobacco sales or distribution continues. The first seven (7)
13 days of additional fines may be suspended, provided that the business or
14 seller is able to prove that the business or seller has applied for the permit
15 within seven (7) days of the citation.

16 SECTION 9. That Section 39-5710, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the
19 legislature that law enforcement agencies, the attorney general, and the de-
20 partment shall enforce this chapter and rules promulgated pursuant thereto
21 in a manner that can reasonably be expected to significantly reduce the ex-
22 tent to which tobacco products and electronic cigarettes are sold or dis-
23 tributed to minors or young adults.

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

28 (3) The department shall conduct at least one (1) random, unannounced
29 inspection per year at all locations where tobacco products are sold or dis-
30 tributed at retail to ensure compliance with this chapter. The department
31 shall conduct inspections for minor exempt permittees without the assis-
32 tance of a minor or young adult. The department shall conduct inspections
33 for all other permittees with the assistance of a minor or young adult. Each
34 year, the department shall conduct random unannounced inspections equal to
35 the number of permittees multiplied by the violation percentage rate re-
36 ported for the previous year multiplied by a factor of ten (10). Local law
37 enforcement agencies are encouraged to contract with the department to per-
38 form these required inspections.

39 (4) Minors may assist with random, unannounced inspections with the
40 written consent of a parent or legal guardian. When assisting with these
41 inspections, minors or young adults shall not provide false identification,
42 nor make any false statement regarding their age.

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

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

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

8 SECTION 10. That Section 39-5711, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 39-5711. FUNDING AND CREATION OF PREVENTION OF MINORS' ACCESS TO TO-
 11 BACCO FUND. There is hereby created the prevention of minors' access to to-
 12 bacco fund in the state treasury. Moneys in the fund shall be used to fund the
 13 administration, inspections and enforcement of this chapter. Moneys in the
 14 fund may be expended only pursuant to appropriation. The fund shall consist
 15 of:

16 (1) The current federal funds that are available for inspections or for
 17 the prevention of minor~~s'~~ and young adults' access to tobacco shall be uti-
 18 lized by the department;

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

21 (3) Moneys from any other source.

22 SECTION 11. That Section 39-5714, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 39-5714. REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall
 25 make a delivery sale of tobacco products to any individual who is under age
 26 ~~eighteen (18)~~ twenty-one (21) years in this state. No seller shall make a
 27 delivery sale of electronic cigarettes to any minor or young adult in this
 28 state.

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

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

41 39-5715. AGE VERIFICATION REQUIREMENTS. (1) No permittee shall mail
 42 or ship tobacco products in connection with a delivery sale order unless, be-
 43 fore mailing or shipping such tobacco products, the permittee accepting the
 44 delivery sale order first obtains from the prospective customer a certifica-
 45 tion that includes proof of age that the purchaser is at least ~~eighteen (18)~~

1 twenty-one (21) years old, the credit or debit card used for payment has been
 2 issued in the purchaser's name, and the address to which the cigarettes are
 3 being shipped matches the credit card company's address for the cardholder.

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

12 SECTION 13. That Section 39-5717, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 39-5717. SHIPPING REQUIREMENTS -- TOBACCO PRODUCTS. Each permittee
 15 who mails or ships tobacco products in connection with a delivery sale or-
 16 der shall include as part of the shipping documents a clear and conspicuous
 17 statement providing as follows:

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

22 Anyone delivering any such container distributes tobacco products as
 23 defined in section 39-5702(5), Idaho Code, and is subject to the terms and
 24 requirements of this chapter. If a permittee taking a delivery sale order
 25 also delivers the tobacco products without using a third-party delivery
 26 service, the permittee shall comply with all the requirements of vendor_as-
 27 sisted sales as defined in section 39-5702(16), Idaho Code.

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

30 39-5717A. SHIPPING REQUIREMENTS -- ELECTRONIC CIGARETTES. Each
 31 seller who mails or ships electronic cigarettes in connection with a deliv-
 32 ery sale order shall include as part of the shipping documents a clear and
 33 conspicuous statement providing as follows:

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

37 If a seller taking a delivery sale order also delivers the electronic
 38 cigarettes without using a third-party delivery service, the seller shall
 39 comply with all the requirements of vendor_as-isted sales.

40 SECTION 15. That the Heading for Chapter 57, Title 39, Idaho Code, be,
 41 and the same is hereby amended to read as follows:

42 CHAPTER 57
 43 PREVENTION OF ~~MINORS'~~ YOUTH ACCESS TO TOBACCO

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

3 39-8421. DEFINITIONS. As used in sections 39-8420 through 39-8425,
4 Idaho Code:

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

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

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

17 (4) "Minor" has the same meaning as that term is defined in section
18 39-5702(6), Idaho Code, ~~of the Idaho prevention of minors' access to tobacco~~
19 ~~act.~~

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

25 (6) "Tobacco products" has the same meaning as that term is defined in
26 section 39-5702(13), Idaho Code, ~~of the Idaho prevention of minors' access~~
27 ~~to tobacco act.~~

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

30 39-8423. REQUIREMENTS FOR CERTIFICATION. (1) Before a cigarette
31 rolling machine operator may be certified by the attorney general, the oper-
32 ator shall certify, under penalty of perjury, that:

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

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

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

46 (d) All cigarette tubes used in the operator's cigarette rolling ma-
47 chine shall be constructed of paper of a type determined by the attorney
48 general, pursuant to regulations to be promulgated by the attorney gen-

1 eral, to reduce the likely ignition propensity of cigarettes to be made
2 with such tubes;

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

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

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

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

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

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

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

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

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

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

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

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

46 39-8424. VIOLATIONS -- ATTORNEY GENERAL AND DISTRICT COURT AUTHORITY
47 -- REVOCATION OF CERTIFICATION. (1) Any person who violates any provision
48 of this act, or any certification provided by the attorney general, is sub-
49 ject to the imposition of a civil penalty by the district court in the amount

1 set forth in section 39-8406(1), Idaho Code. The attorney general and the
2 district courts shall have the same authority in enforcing and carrying out
3 the provisions of this section as is granted the attorney general and dis-
4 trict courts under sections 39-8406 and 39-8407, Idaho Code, of the Idaho to-
5 bacco master settlement agreement complementary act.

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

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

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

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

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

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