

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 244

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO ELECTRONIC SMOKING DEVICES; AMENDING CHAPTER 57, TITLE 39, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 39-5719, IDAHO CODE, TO PROVIDE
3 FOR AN ILLEGAL ELECTRONIC SMOKING DEVICE BRAND LIST, TO PROHIBIT THE
4 SALE OF CERTAIN ELECTRONIC SMOKING DEVICES, TO PROVIDE EXEMPTIONS, TO
5 PROVIDE PENALTIES, TO PROVIDE FOR CERTAIN SEIZURES, TO PROVIDE FOR CER-
6 TAIN INSPECTIONS, AND TO DEFINE TERMS; AND DECLARING AN EMERGENCY AND
7 PROVIDING AN EFFECTIVE DATE.
8

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

10 SECTION 1. That Chapter 57, Title 39, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 39-5719, Idaho Code, and to read as follows:

13 39-5719. ILLEGAL ELECTRONIC SMOKING DEVICE BRAND LIST. (1) By July 1,
14 2025, the department shall publish on its public website a list of electronic
15 smoking device brands that may not be sold for retail sale in this state or to
16 a consumer in this state.

17 (2) (a) The illegal electronic smoking devices brand list shall include
18 the following:

19 (i) Brand families of electronic smoking devices where a SKU in
20 the brand family has been identified in an FDA warning letter as
21 being adulterated or misbranded under the federal food, drug, and
22 cosmetic act;

23 (ii) Brand families of electronic smoking devices where a SKU in
24 the brand family is currently included in an FDA import alert;

25 (iii) Brand families of electronic smoking devices where a SKU in
26 the brand family has been the subject of an FDA seizure order or
27 warrant;

28 (iv) Brand families of electronic smoking devices where a SKU in
29 the brand family has been identified in a civil monetary complaint
30 as being adulterated or misbranded under the federal food, drug,
31 and cosmetic act; and

32 (v) Brand families of electronic smoking devices where a SKU in
33 the brand family has been identified in a civil or criminal com-
34 plaint filed by the United States department of justice as being
35 adulterated or misbranded under the federal food, drug, and cos-
36 metic act.

37 (b) The illegal electronic smoking device brand list shall not include
38 products where the enforcement actions listed in paragraph (a) of this
39 subsection have been withdrawn, stayed, enjoined, or set aside by the
40 agency or a court.

41 (c) The illegal electronic smoking device brand list shall not include
42 products where an enforcement action listed in paragraph (a) of this

1 subsection is based on retailer misconduct rather than on the char-
2 characteristics of the electronic smoking device or its packaging or on
3 conduct by the manufacturer of the electronic smoking device.

4 (3) The department shall maintain a list of electronic smoking devices
5 that are exempt from inclusion on the illegal electronic smoking device
6 brand list. Electronic smoking devices that are not included on the illegal
7 electronic smoking device brand list shall be added to the exemption list if:

8 (a) The electronic smoking device has received a marketing granted or-
9 der from the FDA pursuant to 21 CFR 1114;

10 (b) The electronic smoking device contains nicotine derived from to-
11 bacco, was marketed in the United States as of August 8, 2016, is the
12 subject of an application pursuant to 21 U.S.C. 387j that was submitted
13 to the FDA on or before September 9, 2020, and accepted for filing, and
14 the application either remains under review by the FDA or has received a
15 denial order that has been and remains stayed by the FDA or court order,
16 rescinded by the FDA, or vacated by a court;

17 (c) The electronic smoking device was not required to receive FDA au-
18 thorization prior to marketing because it does not contain nicotine; or

19 (d) The electronic smoking device is a rebrand as defined in subsection
20 (11) of this section.

21 (4) Beginning September 1, 2025, or sixty (60) days after the date that
22 the department first makes the illegal electronic smoking device brand list
23 available for public inspection on its public website, whichever is later,
24 electronic smoking device brand families included on the illegal electronic
25 smoking device brand list may not be sold for retail sale in this state or to a
26 consumer in this state, either directly or through an importer, distributor,
27 wholesaler, retailer, seller, or similar intermediary or intermediaries.

28 (5) The department shall update the illegal electronic smoking device
29 brand list and exemption list at least monthly and provide notice of changes
30 to sellers, distributors, and wholesalers of electronic smoking devices.

31 (6) After the department adds additional products to the illegal elec-
32 tronic smoking device brand list pursuant to subsection (5) of this section,
33 each seller, distributor, and wholesaler shall have sixty (60) days from the
34 date such brand families are added to the list to remove SKUs in those brand
35 families or made by those manufacturers from its inventory.

36 (7) (a) A seller, distributor, or wholesaler who sells or offers for
37 sale an electronic smoking device in this state in violation of the pro-
38 visions of this section shall be subject to the following penalties:

39 (i) In the case of a first violation, the seller, distributor,
40 or wholesaler shall be subject to a fine of five thousand dollars
41 (\$5,000) per violation;

42 (ii) In the case of a second violation in a two (2) year period,
43 the seller, distributor, or wholesaler shall be fined five thou-
44 sand dollars (\$5,000) per brand family and its permit shall be sus-
45 pended for seven (7) days;

46 (iii) In the case of a third violation in a two (2) year period,
47 the seller, distributor, or wholesaler shall be fined five thou-
48 sand dollars (\$5,000) per brand family and its permit shall be sus-
49 pended for thirty (30) days;

1 (iv) In the case of a fourth violation in a two (2) year period,
2 the seller, distributor, or wholesaler shall be fined five thou-
3 sand dollars (\$5,000) per brand family and its permit shall be sus-
4 pended for one (1) year; and

5 (v) In the case of a fifth violation, the seller, distributor, or
6 wholesaler shall be fined five thousand dollars (\$5,000) per brand
7 family and its permit shall be revoked.

8 (b) Offers to sell or sales of an electronic smoking device included in
9 the illegal electronic smoking device brand list that are part of the
10 same brand family shall constitute a single violation.

11 (8) Any electronic smoking devices in a brand family that are included
12 on the illegal electronic smoking device brand list that are held for sale
13 or offered for sale are hereby declared to be contraband goods and shall be
14 seized without a warrant by the department, an employee of the department,
15 or any peace officer when directed by the department. Electronic smoking de-
16 vices seized pursuant to this section shall be subject to destruction or dis-
17 posal and may not be purchased or sold for retail sale in this state. The cost
18 of such seizure and destruction or disposal shall be borne by the person from
19 whom the products are seized.

20 (9) Each retailer, distributor, or wholesaler that sells or dis-
21 tributes electronic smoking devices in this state shall be subject to at
22 least two (2) unannounced compliance checks annually by the department for
23 purposes of enforcing this section. The inspection may be conducted dur-
24 ing the same inspection conducted pursuant to section 39-5710, Idaho Code.
25 Unannounced follow-up compliance checks of all noncompliant retailers,
26 distributors, and wholesalers shall be conducted by the department within
27 thirty (30) days after any violation of this chapter. The department shall
28 publish the results of all compliance checks at least quarterly and shall
29 make the results available to the public on request.

30 (10) By July 1, 2025, the department shall establish an electronic mail
31 address through which violations of this section may be reported to the de-
32 partment.

33 (11) For purposes of this section:

34 (a) "Brand family" means all styles of electronic smoking devices sold
35 under the same trademark and differentiated from one another by means of
36 additional modifiers, and includes the use of a brand name, trademark,
37 logo, symbol, motto, selling message, recognizable pattern of colors or
38 other indicia similar to or identifiable with a previously known brand
39 of alternative nicotine products, electronic nicotine delivery sys-
40 tems, or nicotine liquids.

41 (b) "Distributor" means:

42 (i) Any person engaged in the business of selling tobacco prod-
43 ucts or electronic smoking devices in this state who brings, or
44 causes to be brought, into this state from outside the state any
45 tobacco products or electronic smoking devices for sale;

46 (ii) Any person who makes, manufactures, or fabricates tobacco
47 products or electronic smoking devices in this state for sale in
48 this state; or

49 (iii) Any person engaged in the business of selling tobacco prod-
50 ucts or electronic smoking devices outside this state who ships or

1 transports tobacco products or electronic smoking devices to re-
2 tailers in this state to be sold by those retailers.

3 (c) "FDA" means the United States food and drug administration.

4 (d) "Manufacturer" means any person who manufactures and sells to-
5 bacco products or electronic smoking devices.

6 (e) "Rebrand" means a product for which the manufacturer was not re-
7 quired to submit a premarket tobacco product application for the elec-
8 tronic smoking device because the electronic smoking device reflects
9 changes to the name, brand style, or packaging of a vapor product or con-
10 sumable product.

11 (f) "Retailer" means any person engaged in the business of selling to-
12 bacco products or electronic smoking devices to ultimate consumers.

13 (g) "SKU" means a stock keeping unit number, a unique product identi-
14 fier assigned to an individual electronic smoking device product, or a
15 particular variety of an electronic smoking device within a brand fam-
16 ily.

17 SECTION 2. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after May
19 1, 2025.