

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 405

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO ELECTRONIC CIGARETTES; AMENDING SECTION 39-5702, IDAHO CODE,
2 TO DEFINE A TERM, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORREC-
3 TION; AMENDING SECTION 39-5703, IDAHO CODE, TO ESTABLISH PROVISIONS
4 RELATING TO THE POSSESSION, DISTRIBUTION OR USE OF ELECTRONIC CIGA-
5 RETTES BY MINORS; AMENDING SECTION 39-5705, IDAHO CODE, TO ESTABLISH
6 PROVISIONS RELATING TO THE SALE OR DISTRIBUTION OF ELECTRONIC CIGA-
7 RETTES TO MINORS; AMENDING SECTION 39-5706, IDAHO CODE, TO ESTABLISH
8 PROVISIONS RELATING TO VENDOR ASSISTED SALES OF ELECTRONIC CIGARETTES,
9 TO PROVIDE THAT AFTER A CERTAIN DATE, IT SHALL BE UNLAWFUL TO SELL OR
10 DISTRIBUTE ELECTRONIC CIGARETTES FROM A VENDING MACHINE, TO PROVIDE
11 THAT IT SHALL BE UNLAWFUL TO SELL OR DISTRIBUTE ELECTRONIC CIGARETTES
12 FROM SELF-SERVICE DISPLAYS AND TO REMOVE OBSOLETE LANGUAGE; AMENDING
13 SECTION 39-5708, IDAHO CODE, TO PROVIDE A CIVIL PENALTY FOR CERTAIN VI-
14 OLATIONS RELATING TO ELECTRONIC CIGARETTES; AMENDING SECTION 39-5710,
15 IDAHO CODE, TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO THE CONDUCT
16 OF ENFORCEMENT ACTIONS; AMENDING SECTION 39-5713, IDAHO CODE, TO PRO-
17 VIDE THAT LOCAL UNITS OF GOVERNMENT SHALL NOT HAVE THE POWER TO REQUIRE
18 A PERMIT OR LICENSE FOR THE SALE OR DISTRIBUTION OF ELECTRONIC CIGA-
19 RETTES; AMENDING SECTION 39-5714, IDAHO CODE, TO PROVIDE THAT NO SELLER
20 SHALL MAKE A DELIVERY SALE OF ELECTRONIC CIGARETTES TO ANY MINOR IN THIS
21 STATE; AMENDING SECTION 39-5715, IDAHO CODE, TO PROVIDE CERTAIN AGE
22 VERIFICATION REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
23 SECTION 39-5717, IDAHO CODE, TO REVISE A SHORT TITLE AND TO PROVIDE A
24 CORRECT CODE REFERENCE; AND AMENDING CHAPTER 57, TITLE 39, IDAHO CODE,
25 BY THE ADDITION OF A NEW SECTION 39-5717A, IDAHO CODE, TO PROVIDE SHIP-
26 PING REQUIREMENTS FOR ELECTRONIC CIGARETTES.
27

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

29 SECTION 1. That Section 39-5702, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 39-5702. DEFINITIONS. The terms used in this chapter are defined as
32 follows:

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

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

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

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

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

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

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

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

19 (89) "Permit" means a permit issued by the department for the sale or
20 distribution of tobacco products.

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

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

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

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

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

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

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

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

43 SECTION 2. That Section 39-5703, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 39-5703. POSSESSION, DISTRIBUTION OR USE BY A MINOR. (1) It shall be
46 unlawful for a minor to possess, receive, purchase, sell, distribute, use or
47 consume tobacco products or electronic cigarettes or to attempt any of the
48 foregoing.

1 (2) It shall be unlawful for a minor to provide false identification, or
 2 make any false statement regarding their age in an attempt to obtain tobacco
 3 products or electronic cigarettes.

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

6 (4) A minor may possess but not sell or distribute tobacco products or
 7 electronic cigarettes in the course of employment, for duties such as stock-
 8 ing shelves or carrying purchases to customers' vehicles.

9 (5) Penalties for violations by a minor. A violation of this chapter
 10 by a minor shall constitute a misdemeanor and shall be punishable by impris-
 11 onment in an appropriate facility not exceeding six (6) months, a fine not
 12 exceeding three hundred dollars (\$300), or both such fine and imprisonment.
 13 The court may, in addition to the penalties provided herein, require the
 14 minor and the minor's parents or legal guardian to attend tobacco awareness
 15 programs or to perform community service in programs related to tobacco
 16 awareness.

17 SECTION 3. That Section 39-5705, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS AND ELECTRONIC CIG-
 20 ARETTES TO A MINOR. (1) It shall be unlawful to sell, distribute or offer to-
 21 bacco products or electronic cigarettes to a minor.

22 (2) It shall be an affirmative defense that the seller of a tobacco
 23 product or an electronic cigarette to a minor in violation of this section
 24 had requested, examined and reasonably relied upon a photographic iden-
 25 tification from such person establishing that person's age as at least
 26 eighteen (18) years of age prior to selling such person a tobacco product
 27 or an electronic cigarette. The failure of a seller to request and examine
 28 photographic identification from a person under eighteen (18) years of age
 29 prior to the sale of a tobacco product or an electronic cigarette to such
 30 person shall be construed against the seller and form a conclusive basis for
 31 the seller's violation of this section.

32 SECTION 4. That Section 39-5706, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 39-5706. VENDOR ASSISTED SALES. (1) It shall be unlawful to sell or
 35 distribute tobacco products or electronic cigarettes by any means other than
 36 vendor assisted sales where the customer has no access to the product except
 37 through the assistance of the seller.

38 (2) On and after January 1, 2000, it shall be unlawful to sell or dis-
 39 tribute tobacco products from a vending machine. ~~From January 1, 1999, to~~
 40 ~~December 31, 1999, vending machines shall be located in a place not accessi-~~
 41 ~~ble to persons under the age of nineteen (19) years.~~

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

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

46 (45) Stores with tobacco products comprising at least seventy-five
 47 percent (75%) of total merchandise are exempt from requiring vendor assisted

1 sales, if minors are not allowed in the store and such prohibition is posted
2 clearly on all entrance doors.

3 SECTION 5. That Section 39-5708, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT -- CIVIL PENALTY FOR
6 VIOLATIONS RELATING TO ELECTRONIC CIGARETTES. (1) Any permittee who fails
7 to comply with any part of this chapter, or any current state or local law
8 or rule or regulation regarding the sale or distribution of tobacco products
9 shall be subject to a civil penalty as provided in this section or have their
10 permit suspended, pursuant to compliance with the contested case provisions
11 of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code,
12 or both.

13 (~~12~~) If a seller who is not a permittee violates section 39-5705, Idaho
14 Code, and sells or distributes tobacco products or electronic cigarettes to
15 a minor, then the seller shall be fined one hundred dollars (\$100).

16 (~~23~~) In the case of a first violation, the permittee shall be notified
17 in writing of penalties to be levied for further violations.

18 (~~34~~) In the case of a second violation, the permittee shall be fined two
19 hundred dollars (\$200) and shall be notified in writing of penalties to be
20 levied for further violations. For a violation of section 39-5705, Idaho
21 Code, the permittee shall not be fined if the permittee can show that a train-
22 ing program was in place for the employee and that the permittee has a form
23 signed by that employee on file stating that they understand the tobacco laws
24 dealing with minors and the unlawful purchase of tobacco, but the permittee
25 shall be notified in writing of penalties to be levied for any further viola-
26 tions. If no such training is in place, the permittee shall be fined two hun-
27 dred dollars (\$200).

28 (~~45~~) In the case of a third violation in a two (2) year period, the per-
29 mittee shall be fined two hundred dollars (\$200) and the permit may be sus-
30 pended for up to seven (7) days. If the violation is by an employee, at the
31 same location, who was involved in any previous citation for violation, the
32 permittee shall be fined four hundred dollars (\$400). Effective training
33 and employment practices by the permittee, as determined by the department
34 shall be a mitigating factor in determining permit suspension. Tobacco re-
35 tailers must remove all tobacco products from all areas accessible to or vis-
36 ible to the public while the permit is suspended.

37 (~~56~~) In the case of four (4) or more violations within a two (2) year pe-
38 riod, the permittee shall be fined four hundred dollars (\$400) and the permit
39 shall be revoked until such time that the permittee demonstrates an effec-
40 tive training plan to the department, but in no case shall the revocation be
41 for less than thirty (30) days. Tobacco retailers must remove all tobacco
42 products from all areas accessible to or visible to the public while the per-
43 mit is revoked.

44 (~~67~~) All moneys collected for violations pursuant to this section shall
45 be remitted to the prevention of minors' access to tobacco fund created in
46 section 39-5711, Idaho Code.

47 SECTION 6. That Section 39-5710, Idaho Code, be, and the same is hereby
48 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.

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 exempt permittees without the assis-
15 tance of a minor. The department shall conduct inspections for all other
16 permittees with the assistance of a minor. Each year the department shall
17 conduct random unannounced inspections equal to the number of permittees
18 multiplied by the violation percentage rate reported for the previous year
19 multiplied by a factor of ten (10). Local law enforcement agencies are
20 encouraged to contract with the department to perform these required inspec-
21 tions.

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

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

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

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

38 SECTION 7. That Section 39-5713, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 39-5713. LOCAL ORDINANCES. Nothing in this chapter shall be construed
41 to prohibit local units of government from passing ordinances which are more
42 stringent than the provisions of this chapter. Provided however, local
43 units of government shall not have the power to require a permit or license
44 for the sale or distribution of tobacco products or electronic cigarettes.

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

1 39-5714. REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall make
2 a delivery sale of tobacco products to any individual who is under age eigh-
3 teen (18) years in this state. No seller shall make a delivery sale of elec-
4 tronic cigarettes to any minor in this state.

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

15 SECTION 9. That Section 39-5715, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 39-5715. AGE VERIFICATION REQUIREMENTS. (1) No permittee shall mail
18 or ship tobacco products in connection with a delivery sale order unless, be-
19 fore mailing or shipping such tobacco products, the permittee accepting the
20 delivery sale order first obtains from the prospective customer a certifi-
21 cation ~~which that~~ includes proof of age that the purchaser is at least eigh-
22 teen (18) years old, the credit or debit card used for payment has been issued
23 in the purchaser's name, and the address to which the cigarettes are being
24 shipped ~~match~~ matches the credit card company's address for the cardholder.

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

33 SECTION 10. That Section 39-5717, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 39-5717. SHIPPING REQUIREMENTS -- TOBACCO PRODUCTS. Each permittee
36 who mails or ships tobacco products in connection with a delivery sale or-
37 der shall include as part of the shipping documents a clear and conspicuous
38 statement providing as follows:

39 "TOBACCO PRODUCTS: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS
40 UNDER THE AGE OF EIGHTEEN YEARS, AND REQUIRES THE PAYMENT OF TAXES
41 PURSUANT TO CHAPTER 25, TITLE 63, IDAHO CODE. PERSONS VIOLATING
42 THIS MAY BE CIVILLY AND CRIMINALLY LIABLE."

43 Anyone delivering any such container distributes tobacco products as
44 defined in section 39-5702(5), Idaho Code, and is subject to the terms and
45 requirements of this chapter. If a permittee taking a delivery sale order
46 also delivers the tobacco products without using a third party delivery

1 service, the permittee shall comply with all the requirements of vendor as-
2 sisted sales as defined in section 39-5702(146), Idaho Code.

3 SECTION 11. That Chapter 57, Title 39, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 39-5717A, Idaho Code, and to read as follows:

6 39-5717A. SHIPPING REQUIREMENTS -- ELECTRONIC CIGARETTES. Each
7 seller who mails or ships electronic cigarettes in connection with a deliv-
8 ery sale order shall include as part of the shipping documents a clear and
9 conspicuous statement providing as follows:

10 "ELECTRONIC CIGARETTES: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDU-
11 ALS UNDER THE AGE OF EIGHTEEN YEARS. PERSONS VIOLATING THIS MAY BE
12 CIVILLY LIABLE."

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