

TITLE 39
HEALTH AND SAFETY

CHAPTER 57
PREVENTION OF MINORS' ACCESS TO TOBACCO

39-5701. LEGISLATIVE FINDINGS AND INTENT. The prevention of youth access to tobacco products within the state of Idaho is hereby declared to be a state goal to promote the general health and welfare of Idaho's young people. Twenty-seven percent (27%) of Idaho's youth currently smoke and almost twenty-seven percent (27%) of boys in Idaho use chewing tobacco which is significantly higher than the national average.

Tobacco is the number one killer in Idaho causing more deaths by far than alcohol, illegal drugs, car crashes, homicides, suicides, fires and AIDS combined. According to the center for disease control and prevention (CDC), twenty-four thousand three hundred ninety-four (24,394) children in Idaho currently under eighteen (18) years of age will die prematurely from tobacco-related disease. Tobacco costs the state over two hundred forty million dollars (\$240,000,000) each year and is the single most preventable cause of death and disability in Idaho.

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

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

Therefore, it is this state's policy to prevent the illegal sale, theft and easy access of tobacco products to minors and to prohibit the possession, distribution and use of tobacco products by minors and to punish those who disregard this law.

[39-5701, added 1998, ch. 418, sec. 2, p. 1316.]

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

(1) "Business" means any company, partnership, firm, sole proprietorship, association, corporation, organization, or other legal entity, or a representative of the foregoing entities.

(2) "Delivery sale" means to distribute tobacco products or electronic cigarettes to a consumer in a state where either: (a) the individual submits the order for such sale by means of a telephonic or other method of voice transmission, data transfer via computer networks, including the internet and other online services, or facsimile, or the mails; or (b) the tobacco products or electronic cigarettes are delivered by use of the mails or a delivery service.

(3) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages or other containers.

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

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

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

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

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

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

(10) "Permittee" means the holder of a valid permit for the sale or distribution of tobacco products.

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

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

(13) "Seller" means the person who physically sells or distributes tobacco products or electronic cigarettes.

(14) "Tobacco product" means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers or smokeless tobacco.

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

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

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

[39-5702, added 1998, ch. 418, sec. 2, p. 1317; am. 2003, ch. 159, sec. 1, p. 449; am. 2003, ch. 273, sec. 1, p. 728; am. 2004, ch. 318, sec. 5, p. 897; am. 2012, ch. 39, sec. 1, p. 118.]

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

(2) It shall be unlawful for a minor to sell or distribute tobacco products or electronic cigarettes or to attempt either of the foregoing.

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

(4) A minor who is assisting with a random unannounced inspection in accordance with this chapter shall not be in violation of this chapter.

(5) A minor may possess but not sell or distribute tobacco products or electronic cigarettes in the course of employment, for duties such as stocking shelves or carrying purchases to customers' vehicles.

(6) Penalties for violations by a minor. A violation of subsection (1) of this section by a minor shall constitute an infraction and shall be punishable by a fine of seventeen dollars and fifty cents (\$17.50). The first violation of subsection (2) or (3) of this section by a minor shall constitute an infraction and shall be punishable by a fine of two hundred dollars (\$200). A subsequent violation of subsection (2) or (3) of this section by a minor shall constitute a misdemeanor and shall be punishable by imprisonment in an appropriate facility not exceeding thirty (30) days, a fine not exceeding three hundred dollars (\$300), or both such fine and imprisonment. The court may, in addition to the penalties provided herein, require the minor and the minor's parents or legal guardian to attend tobacco awareness programs or to perform community service in programs related to tobacco awareness.

[39-5703, added 1998, ch. 418, sec. 2, p. 1317; am. 2012, ch. 39, sec. 2, p. 119; am. 2015, ch. 158, sec. 1, p. 553.]

39-5704. PERMITTING OF TOBACCO PRODUCT RETAILERS. (1) It shall be unlawful to sell or distribute or offer tobacco products for sale or distribution at retail or to possess tobacco products with the intention of selling at retail without having first obtained a tobacco permit from the department which shall be the only retail tobacco permit or license required. Provided however, this section shall not be deemed to require a wholesaler or manufacturer's representative or their employees who, in the course of their employment, stock shelves and replenish tobacco products at a permittee's place of business to obtain a permit.

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

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

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

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

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

(7) Permittees are responsible to educate employees as to the requirements of this chapter.

(8) It shall be unlawful for the permittee to allow employees who are minors to sell or distribute tobacco. Exception: Employees who are minors

may possess but not sell or distribute tobacco products in the course of employment, for such duties as stocking shelves or carrying purchases to customers' vehicles.

[39-5704, added 1998, ch. 418, sec. 2, p. 1318.]

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

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

[39-5705, added 1998, ch. 418, sec. 2, p. 1319; am. 2001, ch. 39, sec. 1, p. 74; am. 2012, ch. 39, sec. 3, p. 119.]

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

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

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

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

(5) Stores with tobacco products comprising at least seventy-five percent (75%) of total merchandise are exempt from requiring vendor assisted sales, if minors are not allowed in the store and such prohibition is posted clearly on all entrance doors.

[39-5706, added 1998, ch. 418, sec. 2, p. 1319; am. 2012, ch. 39, sec. 4, p. 120.]

39-5707. OPENED PACKAGES AND SAMPLES. (1) It shall be unlawful to sell or distribute tobacco products for commercial purposes other than in the federally required sealed package provided by the manufacturer with all the required warning labels and health warnings.

(2) It shall be unlawful to sell or distribute tobacco products for free or below the cost of such products to the sellers or distributors of the products for commercial or promotional purposes, to members of the general public in public places or at public events.

[39-5707, added 1998, ch. 418, sec. 2, p. 1319.]

39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT -- CIVIL PENALTY FOR VIOLATIONS RELATING TO ELECTRONIC CIGARETTES. (1) Any permittee who fails to comply with any part of this chapter, or any current state or local law or rule or regulation regarding the sale or distribution of tobacco products shall be subject to a civil penalty as provided in this section or have their

permit suspended, pursuant to compliance with the contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, or both.

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

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

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

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

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

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

[39-5708, added 1998, ch. 418, sec. 2, p. 1319; am. 2001, ch. 39, sec. 2, p. 75; am. 2012, ch. 39, sec. 5, p. 120.]

39-5709. CRIMINAL PENALTIES FOR VIOLATIONS WITHOUT A PERMIT. Sale or distribution of tobacco products, or any violation of this chapter, without a permit is considered by the state of Idaho as an effort to subvert the state's public purpose to prevent minor's access to tobacco products.

(1) The sale or distribution of tobacco products without a permit shall constitute a misdemeanor punishable by imprisonment not exceeding six (6) months in the county jail, a fine of three hundred dollars (\$300), or by both such fine and imprisonment. If the sale or distribution of tobacco products was to a minor, the fine shall be no less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000). The provisions of this section shall not be applicable to an employee of the business engaged in the sale of tobacco products if the sale occurred during the course of such employment and the seller does not have an ownership interest in the business.

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

[39-5709, added 1998, ch. 418, sec. 2, p. 1320.]

39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the legislature that law enforcement agencies, the attorney general, and the department shall enforce this chapter and rules promulgated pursuant thereto in a manner that can reasonably be expected to significantly reduce the extent to which tobacco products and electronic cigarettes are sold or distributed to minors.

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

(3) The department shall conduct at least one (1) random, unannounced inspection per year at all locations where tobacco products are sold or distributed at retail to ensure compliance with this chapter. The department shall conduct inspections for minor exempt permittees without the assistance of a minor. The department shall conduct inspections for all other permittees with the assistance of a minor. Each year the department shall conduct random unannounced inspections equal to the number of permittees multiplied by the violation percentage rate reported for the previous year multiplied by a factor of ten (10). Local law enforcement agencies are encouraged to contract with the department to perform these required inspections.

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

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

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

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

[39-5710, added 1998, ch. 418, sec. 2, p. 1321; am. 2001, ch. 39, sec. 3, p. 75; am. 2003, ch. 159, sec. 2, p. 450; am. 2003, ch. 273, sec. 2, p. 729; am. 2012, ch. 39, sec. 6, p. 121.]

39-5711. FUNDING AND CREATION OF PREVENTION OF MINORS' ACCESS TO TOBACCO FUND. There is hereby created the prevention of minors' access to tobacco fund in the state treasury. Moneys in the fund shall be used to fund the

administration, inspections and enforcement of this chapter. Moneys in the fund may be expended only pursuant to appropriation. The fund shall consist of:

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

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

(3) Moneys from any other source.

[39-5711, added 1998, ch. 418, sec. 2, p. 1321.]

39-5712. SEVERABILITY. If any section or provision of this chapter is held invalid, such invalidity shall not affect other sections or provisions of this chapter.

[39-5712, added 1998, ch. 418, sec. 2, p. 1321.]

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

[39-5713, added 1998, ch. 418, sec. 2, p. 1321; am. 2012, ch. 39, sec. 7, p. 121.]

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

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

[39-5714, added 2003, ch. 273, sec. 3, p. 730; am. 2012, ch. 39, sec. 8, p. 122.]

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

(2) No seller shall mail or ship an electronic cigarette in connection with a delivery sale order unless, before mailing or shipping such electronic cigarette, the seller accepting the delivery sale order first obtains from the prospective customer a certification that includes proof of age

that the purchaser is at least eighteen (18) years old, the credit or debit card used for payment has been issued in the purchaser's name and the address to which the electronic cigarette is being shipped matches the credit or debit card company's address for the cardholder.

[39-5715, added 2003, ch. 273, sec. 3, p. 730; am. 2012, ch. 39, sec. 9, p. 122.]

39-5716. DISCLOSURE AND NOTICE REQUIREMENTS. For all delivery sales a permittee shall post on any advertisement or website:

(1) The cautionary language for signs under section 39-5704(6), Idaho Code;

(2) A prominent and clearly legible statement that consists of one (1) of the warnings set forth in section 4(a)(1) of the federal cigarette labeling and advertising act (15 U.S.C. section 1333(a)(1)) rotated on a quarterly basis;

(3) A prominent and clearly legible statement that sales of cigarettes are taxable under chapter 25, title 63, Idaho Code, and an explanation of how such tax has been, or is to be paid, with respect to such delivery sale.

[39-5716, added 2003, ch. 273, sec. 3, p. 730.]

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

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

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

[39-5717, added 2003, ch. 273, sec. 3, p. 730; am. 2012, ch. 39, sec. 10, p. 122.]

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

"ELECTRONIC CIGARETTES: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS. PERSONS VIOLATING THIS MAY BE CIVILLY LIABLE."

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

[39-5717A, added 2012, ch. 39, sec. 11, p. 123.]

39-5718. REGISTRATION AND REPORTING REQUIREMENTS. (1) Prior to making delivery sales or shipping tobacco products in connection with any such sales, every business shall obtain a permit from the department and file with the state tax commission a statement setting forth the seller's name, trade

name and the address of the business's principal place of business and any other place of business.

(2) Not later than the tenth day of each calendar month, each permittee that has made a delivery sale or shipped or delivered tobacco products in connection with any such sale during the previous calendar month shall file with the department and the state tax commission a memorandum or a copy of the invoice which provides for each and every such delivery sale:

(a) The name and address of the individual to whom the delivery sale was made;

(b) The brand or brands of the tobacco products that were sold in such delivery sale; and

(c) The quantity of tobacco products that were sold in such delivery sale.

(3) Any tobacco products sold or attempted to be sold in a delivery sale that does not meet the requirements of this chapter shall be forfeited to the state of Idaho.

[39-5718, added 2003, ch. 273, sec. 3, p. 731.]