

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 518

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO CIGARETTE ROLLING MACHINES; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8420, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8421, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8422, IDAHO CODE, TO PROVIDE CERTIFICATION FOR CIGARETTE ROLLING MACHINE OPERATORS; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8423, IDAHO CODE, TO ESTABLISH REQUIREMENTS FOR CERTIFICATION; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8424, IDAHO CODE, TO PROVIDE THE ATTORNEY GENERAL AND DISTRICT COURT AUTHORITY TO ENFORCE AND ENTER ORDERS FOR VIOLATIONS OF THIS ACT; AND AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8425, IDAHO CODE, TO PROVIDE FOR RULEMAKING.

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

SECTION 1. That Chapter 84, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-8420, Idaho Code, and to read as follows:

39-8420. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds that the commercial use of cigarette rolling machines in this state has the potential to circumvent various requirements under Idaho law related to the manufacturing, marketing, sale and taxation of cigarettes. Such use is to the detriment of the fiscal soundness of the state and the public health.

(2) This legislation is intended to ensure that cigarette rolling machine operators comply with applicable Idaho laws governing the manufacturing, marketing, sale and taxation of cigarettes and that the use of such cigarette rolling machines will not circumvent these laws and undercut the purposes for which they were enacted.

SECTION 2. That Chapter 84, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-8421, Idaho Code, and to read as follows:

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

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

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

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

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

(5) "Person" means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, business entities, and any other legal entity, or any other group associated in fact although not a legal entity.

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

SECTION 3. That Chapter 84, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-8422, Idaho Code, and to read as follows:

39-8422. CERTIFICATION OF CIGARETTE ROLLING MACHINE OPERATORS. A cigarette rolling machine operator may not locate at, offer, or make a cigarette rolling machine available for use, or offer for sale cigarettes manufactured by the operator or any other person at the location of the operator's cigarette rolling machine, until the operator has first been certified by the attorney general upon a form prescribed by the attorney general. The attorney general shall annually certify a cigarette rolling machine operator, but only after he has obtained adequate certification from the operator, as set forth in section 39-8423, Idaho Code, and has been provided by the operator sufficient information identifying the operator, the location, the make and brand of the operator's cigarette rolling machine, and the person(s) from whom the operator will purchase its tobacco for purposes of the operator's cigarette rolling machine's manufacturing of cigarettes.

SECTION 4. That Chapter 84, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-8423, Idaho Code, and to read as follows:

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

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

(b) All applicable state tobacco taxes have been paid, as required by the cigarette and tobacco products tax act, chapter 25, title 63, Idaho

1 Code, for the tobacco to be used in the operator's cigarette rolling ma-  
2 chine;

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

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

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

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

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

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

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

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

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

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

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

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

47 (5) A cigarette rolling machine operator shall not be required to com-  
48 ply with the provisions of section 39-8423(1)(d), Idaho Code, until the  
49 attorney general has promulgated rules implementing this subsection, pur-

1 suant to section 39-8425, Idaho Code, and the effective date provided for  
2 such rules has passed.

3 SECTION 5. That Chapter 84, 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 39-8424, Idaho Code, and to read as follows:

6 39-8424. VIOLATIONS -- ATTORNEY GENERAL AND DISTRICT COURT AUTHORITY  
7 -- REVOCATION OF CERTIFICATION. (1) Any person who violates any provision  
8 of this act, or any certification provided by the attorney general, is sub-  
9 ject to the imposition of a civil penalty by the district court in the amount  
10 set forth in section 39-8406(1), Idaho Code. The attorney general and the  
11 district courts shall have the same authority in enforcing and carrying out  
12 the provisions of this section as is granted the attorney general and dis-  
13 trict courts under sections 39-8406 and 39-8407, Idaho Code, of the Idaho to-  
14 bacco master settlement agreement complementary act.

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

17 (a) The district court shall have the authority to revoke the cigarette  
18 rolling machine operator's tobacco permit issued by the department of  
19 health and welfare, pursuant to the Idaho prevention of minors' access  
20 to tobacco act, for a period of at least three (3) months but up to one  
21 (1) year.

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

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

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

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

1       SECTION 6. That Chapter 84, Title 39, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 39-8425, Idaho Code, and to read as follows:

4       39-8425. RULEMAKING. The attorney general may adopt rules to imple-  
5 ment this act. With respect to section 39-8423(1)(d), Idaho Code, the at-  
6 torney general shall adopt rules with an effective date that is no earlier  
7 than July 1, 2013. In adopting rules implementing subsection 39-8423(1)(d),  
8 Idaho Code, the attorney general may provide for an effective date that is  
9 later than July 2, 2013, if, in his discretion, such later effective date is  
10 warranted.