

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 518

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO CIGARETTE ROLLING MACHINES; AMENDING CHAPTER 84, TITLE 39, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 39-8420, IDAHO CODE, TO PROVIDE
3 LEGISLATIVE FINDINGS AND INTENT; AMENDING CHAPTER 84, TITLE 39, IDAHO
4 CODE, BY THE ADDITION OF A NEW SECTION 39-8421, IDAHO CODE, TO DEFINE
5 TERMS; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE, BY THE ADDITION OF A
6 NEW SECTION 39-8422, IDAHO CODE, TO PROVIDE CERTIFICATION FOR CIGARETTE
7 ROLLING MACHINE OPERATORS; AMENDING CHAPTER 84, TITLE 39, IDAHO CODE,
8 BY THE ADDITION OF A NEW SECTION 39-8423, IDAHO CODE, TO ESTABLISH RE-
9 QUIREMENTS FOR CERTIFICATION; AMENDING CHAPTER 84, TITLE 39, IDAHO
10 CODE, BY THE ADDITION OF A NEW SECTION 39-8424, IDAHO CODE, TO PROVIDE
11 THE ATTORNEY GENERAL AND DISTRICT COURT AUTHORITY TO ENFORCE AND ENTER
12 ORDERS FOR VIOLATIONS OF THIS ACT; AND AMENDING CHAPTER 84, TITLE 39,
13 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-8425, IDAHO CODE, TO
14 PROVIDE FOR RULEMAKING.
15

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

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

20 39-8420. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds
21 that the commercial use of cigarette rolling machines in this state has the
22 potential to circumvent various requirements under Idaho law related to the
23 manufacturing, marketing, sale and taxation of cigarettes. Such use is to
24 the detriment of the fiscal soundness of the state and the public health.

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

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

33 39-8421. DEFINITIONS. As used in sections 39-8420 through 39-8425,
34 Idaho Code:

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

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

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

7 (4) "Minor" has the same meaning as that term is defined in section
 8 39-5702(6), Idaho Code, of the Idaho prevention of minors' access to tobacco
 9 act.

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

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

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

21 39-8422. CERTIFICATION OF CIGARETTE ROLLING MACHINE OPERATORS. A
 22 cigarette rolling machine operator may not locate at, offer, or make a
 23 cigarette rolling machine available for use, or offer for sale cigarettes
 24 manufactured by the operator or any other person at the location of the oper-
 25 ator's cigarette rolling machine, until the operator has first been certi-
 26 fied by the attorney general upon a form prescribed by the attorney general.
 27 The attorney general shall annually certify a cigarette rolling machine
 28 operator, but only after he has obtained adequate certification from the
 29 operator, as set forth in section 39-8423, Idaho Code, and has been provided
 30 by the operator sufficient information identifying the operator, the loca-
 31 tion, the make and brand of the operator's cigarette rolling machine, and the
 32 person(s) from whom the operator will purchase its tobacco for purposes of
 33 the operator's cigarette rolling machine's manufacturing of cigarettes.

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

37 39-8423. REQUIREMENTS FOR CERTIFICATION. (1) Before a cigarette
 38 rolling machine operator may be certified by the attorney general, the oper-
 39 ator shall certify, under penalty of perjury, that:

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

46 (b) All applicable state tobacco taxes have been paid, as required by
 47 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.