



Contact IDHW's Idaho Tobacco Project at: 877-641-4468
ID Tobacco Project Website: healthandwelfare.idaho.gov/providers
Select the topic "Retailers" then "Idaho Tobacco Project."

Volume 22, Issue 6
June 2023

2023 FACTS AND STATS

What was the Compliance Grade for state tobacco and electronic smoking device inspections?

Grade A-
for
May 2023

According to Idaho Code 39-5701, the Idaho Department of Health and Welfare must inspect each Permitted Retailer that sells tobacco and electronic smoking devices to ensure that it does not sell these products to minors.

How well did these Permitted Retailers comply with the law in May 2023?

- 141 Permitted Retailers were inspected. *
- 13 Permitted Retailers sold to the inspecting minor.
- The compliance rate for May 2023 was:

90.78%

GREAT WORK!

*Non-minor Exempt Inspections where purchase attempts were made.

Understanding Exemptions Under Idaho Code 39-5701, et seq.

Retailers who sell tobacco products and/or electronic smoking devices to the public must be permitted. This information should not come as a surprise. In fact, if your business is getting these monthly newsletters, then you currently have a valid 2023 Idaho Tobacco and Electronic Smoking Device Permit.

If, at any time, you have questions regarding permit status, need to make changes, or need help obtaining a permit, do not hesitate to contact our support team by calling 877-641-4468.

Is my retailer location exempt from certain rules under the code?

There has been some confusion about who qualifies for the exemptions outlined in [Idaho Code 39-5701 et seq.](#) It is important to note that most permitted retailers do NOT qualify for any exemptions under the code. So, when in doubt, assume the code exemptions do not apply to your business. However, if you have questions about whether your retail location qualifies for exemptions under the code that are not answered in this newsletter, please call our support team at 877-641-4468.

There are two types of exemptions mentioned in the code: **Minor-Exempt Permits** and the **Vendor-Assisted Sales Exemption**. Let's examine the difference:

Minor-Exempt Permits

State law requires that every permitted location in Idaho be inspected to ensure compliance with the sales to minor law (i.e., preventing the sale of tobacco and e-device products to all customers under 21). However, a retailer who has a minor-exempt permit is exempt from inspections that would use an underage inspector.

How do these retailers qualify to be "minor-exempt?" Idaho Code 39-5702 (7) states,

"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."

To summarize, these minor-exempt retailers are typically age-restricted bars/saloons or adult-themed businesses.

Most retailers cannot meet the 55% total revenue of sales of alcohol for on-site consumption or the profanity requirements to be exempt from inspections that use underage inspectors. For example, a restaurant that sells alcohol does not meet the minor-exempt requirement since 55% of their revenue does not come from the sale of alcohol for on-site consumption, but rather food. The same is true for a motel/hotel that has an on-site bar. The bar itself may be age-restricted and sell alcohol for on-site consumption, but 55% of the total revenue of the business does not come from the sale of alcohol, but from motel/hotel revenue. These types of bars can still be inspected by an underage inspector.

Does that mean minor-exempt bars/saloons and adult-themed businesses do not get inspected at all? No! In fact, adult inspectors check these locations for all other requirements under the code. Such as,

- The requirement that all tobacco products and e-device sales be vendor-assisted. (Idaho Code 39-5706)
- The requirement that all tobacco products and e-devices be securely stored and out of reach of customers (no self-service displays or vending machines) until the final sale has occurred. (Idaho Code 39-5706)
- The requirement that all tobacco products and e-devices be sold in their original manufacturer packaging (no open packages or samples). (Idaho Code 39-5707)

Vendor-Assisted Sales Exemption

If a retailer location has a “minor-exempt permit” that does NOT mean they are also exempt from Vendor-Assisted Sales requirements.

How does a retailer qualify to be exempt from vendor-assisted sales? Idaho Code 39-5706 (3) states,

“Stores with tobacco products or electronic smoking devices 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.”

To summarize, these retailers are Tobacco Stores and Vape Shops where at least 75% of their total merchandise is tobacco and/or e-device products. These retailers can have tobacco products and/or e-devices on the store floor in self-service displays where customers can handle the products prior to purchase. Signs must be posted to restrict access to anyone under 21. However, it is important to note that being exempt from the vendor-assisted sale requirement does not make the location minor-exempt. Underage inspectors can still attempt to purchase tobacco or e-device products from these locations.

Prevent-The-Sale!

Idaho Tobacco Retailers have two resources for Prevent-The-Sale content: Visit Idaho’s Department of Health and Welfare’s official [Idaho Tobacco Project-Prevent The Sale](#) webpage for statewide information. Visit Idaho Tobacco Projects interactive website [Preventthesale.com](#) for interactive and evolving content, including newsletter archives, information on IDs, and downloadable resources and documents. This site has new material available for download!



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What’s inside?

- Facts and Stats
- Understanding Code Exemptions
- Minor-Exempt Permits
- Vendor-Assisted Sales Exemption
- Prevent-The-Sale Resources

PLEASE DISTRIBUTE TO EMPLOYEES