
SUBSTITUTE SENATE BILL 5621

State of Washington**53rd Legislature****1993 Regular Session**

By Senate Committee on Health & Human Services (originally sponsored by Senators Prentice, Moyer, Fraser, Winsley and Oke; by request of Department of Health, Department of Social and Health Services and Board of Health)

Read first time 03/03/93.

1 AN ACT Relating to access to tobacco; amending RCW 82.24.520,
2 82.24.530, 82.24.550, and 82.24.560; reenacting and amending RCW
3 26.28.080; adding a new section to chapter 43.70 RCW; adding a new
4 chapter to Title 70 RCW; creating new sections; and prescribing
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the leading cause
8 of preventable death is tobacco use. Further, the legislature
9 recognizes the high rate of smoking prevalence by youth and young
10 pregnant women in our state. The vast majority of new smokers are
11 teenagers or younger children. The earlier a child starts using
12 tobacco the more likely that he or she will be unable to quit. By the
13 time Washington state youth become high school seniors, one out of
14 every four is an addicted smoker. The legislature finds that youth
15 obtain tobacco products with ease. Washington state has no organized
16 effort to prevent children from purchasing tobacco products. Tobacco
17 products that are provided free or at nominal charge are likely to fall
18 into the hands of youth, and the sale of single cigarettes are more

1 affordable to youth. It is imperative to effectively enforce the
2 prohibition of sales to minors.

3 NEW SECTION. **Sec. 2.** (1) The definitions set forth in RCW
4 82.24.010 shall apply to sections 3 through 13 of this act, except that
5 "department" refers to the Washington state department of health.

6 (2) "Minor" as used in sections 3 through 13 of this act refers to
7 an individual who is less than eighteen years old.

8 NEW SECTION. **Sec. 3.** A person who holds a license issued under
9 RCW 82.24.520 or 82.24.530 shall:

10 (1) Display the license or a copy in a prominent location at the
11 outlet for which the license is issued; and

12 (2) Display a sign concerning the prohibition of tobacco sales to
13 minors.

14 Such sign shall:

15 (a) Be posted so that it is clearly visible to anyone purchasing
16 tobacco products from the licensee;

17 (b) Be designed and produced by the department of health to read:
18 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY
19 PROHIBITED BY STATE LAW, PHOTO ID REQUIRED"; and

20 (c) Be provided free of charge by the liquor control board.

21 NEW SECTION. **Sec. 4.** No person shall sell or permit to be sold
22 any tobacco product through any device that mechanically dispenses
23 tobacco products unless the device is located fully within premises
24 from which minors are prohibited or in industrial worksites where
25 minors are not employed and not less than ten feet from all entrance or
26 exit ways to and from each premises.

27 NEW SECTION. **Sec. 5.** A person under the age of eighteen who
28 purchases or attempts to purchase cigarettes or tobacco products is
29 subject to a civil penalty not to exceed one hundred dollars. This
30 provision does not apply when a person under the age of eighteen is
31 participating in a controlled purchase as part of law enforcement
32 activities.

1 NEW SECTION. **Sec. 6.** No person shall sell or permit to be sold
2 any tobacco product not in the original unopened package or container
3 to which the stamps required by RCW 82.24.060 have been affixed.

4 This section does not apply to the sale of loose leaf tobacco by a
5 retail business that generates a minimum of sixty percent of annual
6 gross sales from the sale of tobacco products.

7 NEW SECTION. **Sec. 7.** No retailer, wholesaler, tobacco
8 manufacturer, or agent thereof, shall give or distribute cigarettes or
9 other tobacco products to any person at no cost.

10 NEW SECTION. **Sec. 8.** No person shall give or distribute
11 cigarettes or other tobacco products to a person at a reduced price by
12 a coupon if such coupon is redeemed in any manner that does not require
13 an in-person transaction between a buyer and seller.

14 NEW SECTION. **Sec. 9.** (1) Where there may be a question of a
15 person's right to purchase tobacco products by reason of age, the
16 retailer, or agent thereof, shall require the purchaser to present any
17 one of the following officially issued identification that shows the
18 purchaser's age and bears his or her signature and photograph: Liquor
19 control authority card of identification of a state or province of
20 Canada; driver's license, instruction permit, or identification card of
21 a state or province of Canada; "identocard" issued by the Washington
22 state department of licensing under chapter 46.20 RCW; United States
23 military identification; passport; or merchant marine identification
24 card issued by the United States coast guard.

25 (2) It is a defense to a prosecution under RCW 26.28.080(4) that
26 the person making a sale reasonably relied on any of the officially
27 issued identification as defined in subsection (1) of this section.

28 NEW SECTION. **Sec. 10.** (1) The liquor control board may suspend or
29 revoke a retailer's license under chapter 82.24 RCW or a license under
30 chapter 66.24 RCW held by a business at any location, or may impose a
31 monetary penalty as set forth in subsection (2) of this section, if the
32 liquor control board finds that the licensee has violated RCW
33 26.28.080(4), or section 3, 4, 6, 7, or 8 of this act.

1 (2) The sanctions that the liquor control board may impose against
2 a person licensed under RCW 82.24.530 based upon one or more findings
3 under section 1 of this act may not exceed the following:

4 (a) For violation of RCW 26.28.080(4) or section 3 of this act:

5 (i) A monetary penalty of one hundred dollars for the first
6 violation within any two-year period;

7 (ii) A monetary penalty of three hundred dollars for the second
8 violation within any two-year period;

9 (iii) A monetary penalty of one thousand dollars and suspension of
10 the license for a period of six months for the third violation within
11 any two-year period;

12 (iv) A monetary penalty of one thousand five hundred dollars and
13 suspension of the license for a period of twelve months for the fourth
14 violation within any two-year period;

15 (v) Revocation of the license with no possibility of reinstatement
16 for a period of five years for the fifth or more violation within any
17 two-year period;

18 (b) For violations of section 4 of this act, a monetary penalty in
19 the amount of one hundred dollars for each day upon which such
20 violation occurred;

21 (c) For violations of section 6 of this act occurring on the
22 licensed premises:

23 (i) A monetary penalty of one hundred dollars for the first
24 violation within any two-year period;

25 (ii) A monetary penalty of three hundred dollars for the second
26 violation within any two-year period;

27 (iii) A monetary penalty of one thousand dollars and suspension of
28 the license for a period of six months for the third violation within
29 any two-year period;

30 (iv) A monetary penalty of one thousand five hundred dollars and
31 suspension of the license for a period of twelve months for the fourth
32 violation within any two-year period;

33 (v) Revocation of the license with no possibility of reinstatement
34 for a period of five years for the fifth or more violation within any
35 two-year period;

36 (d) For violations of section 7 of this act, a monetary penalty in
37 the amount of three hundred dollars for each violation;

38 (e) For violations of section 8 of this act, a monetary penalty in
39 the amount of one thousand dollars for each violation.

1 (3) The liquor control board may impose a monetary penalty upon any
2 person other than a licensed cigarette retailer if the liquor control
3 board finds that the person has violated RCW 26.28.080(4), or section
4 3, 4, 6, 7, or 8 of this act.

5 (4) The monetary penalty that the liquor control board may impose
6 based upon one or more findings under subsection (3) of this section
7 may not exceed the following:

8 (a) For violation of RCW 26.28.080(4) or section 3 of this act, one
9 hundred dollars for each violation;

10 (b) For violations of section 4 of this act, one hundred dollars
11 for each day upon which such violation occurred;

12 (c) For violations of section 6 of this act, one hundred dollars
13 for each violation;

14 (d) For violations of section 7 of this act, three hundred dollars
15 for each violation;

16 (e) For violations of section 8 of this act, one thousand dollars
17 for each violation.

18 (5) The liquor control board may issue a cease and desist order to
19 any person who is found by the liquor control board to have violated or
20 intending to violate the provisions of this chapter, RCW 26.28.080(4)
21 or 82.24.500, requiring such person to cease specified conduct that is
22 in violation. The issuance of a cease and desist order shall not
23 preclude the imposition of other sanctions authorized by this statute
24 or any other provision of law.

25 (6) The liquor control board may seek injunctive relief to enforce
26 the provisions of RCW 26.28.080(4) or 82.24.500 or this chapter. The
27 liquor control board may initiate legal action to collect civil
28 penalties imposed under this chapter if the same have not been paid
29 within thirty days after imposition of such penalties. In any action
30 filed by the liquor control board under this chapter, the court may, in
31 addition to any other relief, award the liquor control board reasonable
32 attorneys' fees and costs.

33 (7) All proceedings under subsections (1) through (5) of this
34 section shall be conducted in accordance with chapter 34.05 RCW.

35 NEW SECTION. **Sec. 11.** (1) The liquor control board shall, in
36 addition to the board's other powers and authorities, have the
37 authority to enforce the provisions of this chapter and RCW
38 26.28.080(4) and 82.24.500. The liquor control board shall have full

1 power to revoke or suspend the license of any retailer or wholesaler in
2 accordance with the provisions of section 10 of this act.

3 (2) The liquor control board and the board's authorized agents or
4 employees shall have full power and authority to enter any place of
5 business where tobacco products are sold for the purpose of enforcing
6 the provisions of this chapter.

7 (3) For the purpose of enforcing the provisions of this chapter and
8 RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer
9 of the liquor control board who has reasonable grounds to believe a
10 person observed by the officer purchasing, attempting to purchase, or
11 in possession of tobacco products is under the age of eighteen years of
12 age, may detain such person for a reasonable period of time and in such
13 a reasonable manner as is necessary to determine the person's true
14 identity and date of birth. Further, tobacco products possessed by
15 persons under the age of eighteen years of age are considered
16 contraband and may be seized by a peace officer or enforcement officer
17 of the liquor control board.

18 (4) The liquor control board may work with local county health
19 departments and local law enforcement agencies to conduct unannounced,
20 random stings.

21 NEW SECTION. **Sec. 12.** (1) The youth tobacco prevention account is
22 created in the state treasury. All fees collected pursuant to RCW
23 82.24.520 and 82.24.530 and funds collected by the liquor control board
24 from the imposition of monetary penalties shall be deposited into this
25 account.

26 (2) Moneys appropriated from the youth tobacco prevention account
27 to the department of health shall be used by the department of health
28 for implementation of this chapter, including collection and reporting
29 of data regarding enforcement and the extent to which access to tobacco
30 products by youth has been reduced.

31 (3) The department shall enter into interagency agreements with the
32 liquor control board to pay the costs incurred, up to thirty percent of
33 available funds, in carrying out its enforcement responsibilities under
34 this chapter. Such agreements shall set forth standards of
35 enforcement, consistent with the funding available, so as to reduce the
36 extent to which tobacco products are available to individuals under the
37 age of eighteen. The agreements shall also set forth requirements for

1 data reporting by the liquor control board regarding its enforcement
2 activities.

3 (4) The department of health and the department of revenue shall
4 enter into an interagency agreement for payment of the cost of
5 administering the tobacco retailer licensing system and for the
6 provision of quarterly documentation of tobacco wholesaler, retailer,
7 and vending machine names and locations.

8 (5) The department of health shall, within up to seventy percent of
9 available funds, provide grants to local health departments or other
10 local community agencies to develop and implement coordinated tobacco
11 intervention strategies to prevent and reduce tobacco use by youth.

12 NEW SECTION. **Sec. 13.** This chapter preempts political
13 subdivisions of the state from adopting requirements for the licensure
14 and regulation of tobacco product promotions and sales within retail
15 stores and wholesale operations. No political subdivision of the state
16 may: (1) Impose fees or license requirements on retail and wholesale
17 businesses for possessing or selling cigarettes or tobacco products; or
18 (2) Regulate activities prohibited by sections 3 through 9 of this act.
19 This chapter does not otherwise preempt political subdivisions of the
20 state from adopting ordinances regulating the sale, purchase, use, or
21 promotion of tobacco products.

22 **Sec. 14.** RCW 82.24.520 and 1986 c 321 s 6 are each amended to read
23 as follows:

24 (1) A fee of (~~six hundred fifty~~) thirteen hundred dollars shall
25 accompany each wholesaler's license application or license renewal
26 application. If a wholesaler sells or intends to sell cigarettes at
27 two or more places of business, whether established or temporary, a
28 separate license with a license fee of (~~one hundred fifteen~~) two
29 hundred fifty dollars shall be required for each additional place of
30 business.

31 (2) Each license, or certificate thereof, and such other evidence
32 of license as the department of revenue requires, shall be exhibited in
33 the place of business for which it is issued and in such manner as is
34 prescribed for the display of a master license.

35 (3) The department of revenue shall require each licensed
36 wholesaler to file with the department a bond in an amount not less
37 than one thousand dollars to guarantee the proper performance of the

1 duties and the discharge of the liabilities under this chapter. The
2 bond shall be executed by such licensed wholesaler as principal, and by
3 a corporation approved by the department of revenue and authorized to
4 engage in business as a surety company in this state, as surety. The
5 bond shall run concurrently with the wholesaler's license.

6 **Sec. 15.** RCW 82.24.530 and 1986 c 321 s 7 are each amended to read
7 as follows:

8 A fee of (~~ten~~) ninety-three dollars shall accompany each
9 retailer's license application or license renewal application. A
10 separate license is required for each separate location at which the
11 retailer operates. A fee of (~~one~~) thirty additional dollars for each
12 vending machine shall accompany each application or renewal for a
13 license issued to a retail dealer operating a cigarette vending
14 machine.

15 NEW SECTION. **Sec. 16.** The department of health shall report to
16 the house of representatives and senate committees with jurisdiction
17 for health issues no later than February 1, 1995, on the effectiveness
18 of enforcement and education activities as specified in this act. This
19 study shall include information concerning the adequacy of revenue to
20 support enforcement and education activities.

21 **Sec. 17.** RCW 82.24.550 and 1986 c 321 s 9 are each amended to read
22 as follows:

23 (1) The department of revenue shall enforce the provisions of this
24 chapter except RCW 82.24.500, which will be enforced by the liquor
25 control board. The department of revenue may adopt, amend, and repeal
26 rules necessary to enforce and administer the provisions of this
27 chapter. The department of revenue has full power and authority to
28 revoke or suspend the license or permit of any wholesale or retail
29 cigarette dealer in the state upon sufficient cause appearing of the
30 violation of this chapter or upon the failure of such licensee to
31 comply with any of the provisions of this chapter.

32 (2) A license shall not be suspended or revoked except upon notice
33 to the licensee and after a hearing as prescribed by the department of
34 revenue. The department of revenue, upon a finding by same, that the
35 licensee has failed to comply with any provision of this chapter or any
36 rule promulgated thereunder, shall, in the case of the first offender,

1 suspend the license or licenses of the licensee for a period of not
2 less than thirty consecutive business days, and, in the case of a
3 second or plural offender, shall suspend the license or licenses for a
4 period of not less than ninety consecutive business days nor more than
5 twelve months, and, in the event the department of revenue finds the
6 offender has been guilty of willful and persistent violations, it may
7 revoke the license or licenses.

8 (3) Any person whose license or licenses have been so revoked may
9 apply to the department of revenue at the expiration of one year for a
10 reinstatement of the license or licenses. The license or licenses may
11 be reinstated by the department of revenue if it appears to the
12 satisfaction of the department of revenue that the licensee will comply
13 with the provisions of this chapter and the rules promulgated
14 thereunder.

15 (4) A person whose license has been suspended or revoked shall not
16 sell cigarettes or permit cigarettes to be sold during the period of
17 such suspension or revocation on the premises occupied by the person or
18 upon other premises controlled by the person or others or in any other
19 manner or form whatever.

20 (5) Any determination and order by the department of revenue, and
21 any order of suspension or revocation by the department of revenue of
22 the license or licenses, or refusal to reinstate a license or licenses
23 after revocation shall be reviewable by an appeal to the superior court
24 of Thurston county. The superior court shall review the order or
25 ruling of the department of revenue and may hear the matter de novo,
26 having due regard to the provisions of this chapter and the duties
27 imposed upon the department of revenue.

28 **Sec. 18.** RCW 82.24.560 and 1986 c 321 s 10 are each amended to
29 read as follows:

30 Except as specified in section 12 of this act, all fees and
31 penalties received or collected by the department of revenue pursuant
32 to this chapter shall be paid to the state treasurer, to be credited to
33 the general fund.

34 **Sec. 19.** RCW 26.28.080 and 1987 c 250 s 2 and 1987 c 204 s 1 are
35 each reenacted and amended to read as follows:

36 Every person who:

1 (1) Shall admit to or allow to remain in any concert saloon, or in
2 any place owned, kept, or managed by him or her where intoxicating
3 liquors are sold, given away or disposed of--except a restaurant or
4 dining room, any person under the age of eighteen years; or,

5 (2) Shall admit to, or allow to remain in any public pool or
6 billiard hall, or in any place of entertainment injurious to health or
7 morals, owned, kept or managed by him or her, any person under the age
8 of eighteen years; or,

9 (3) Shall suffer or permit any such person to play any game of
10 skill or chance, in any such place, or in any place adjacent thereto,
11 or to be or remain therein, or admit or allow to remain in any reputed
12 house of prostitution or assignation, or in any place where opium or
13 any preparation thereof, is smoked, or where any narcotic drug is used,
14 any persons under the age of eighteen years; or,

15 (4) Shall knowingly or through failure to check identification sell
16 or give, or permit to be sold or given to any person under the age of
17 eighteen years any cigar, cigarette, cigarette paper or wrapper, or
18 tobacco in any form; or

19 (5) Shall sell, or give, or permit to be sold or given to any
20 person under the age of eighteen years, any revolver or pistol;

21 Shall be guilty of a gross misdemeanor.

22 It shall be no defense to a prosecution for a violation of this
23 section that the person acted, or was believed by the defendant to act,
24 as agent or representative of another.

25 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.70 RCW
26 to read as follows:

27 The department of health shall implement a tobacco education
28 program that emphasizes no new smokers, targets young people, and
29 promotes reduction of use. The program shall include an advertising
30 element that uses diverse types of media and strives to reach all
31 subcultures and subgroups of local communities. The advertising shall
32 stress the dangers and problems of tobacco use. This program shall be
33 funded by no less than half the savings to the state through compliance
34 with the provisions of the alcohol, drug abuse and mental health
35 administration reorganization act of 1992 (Public Law 102-321 Section
36 1926).

1 NEW SECTION. **Sec. 21.** Sections 2 through 13 of this act shall
2 constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 22.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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