
Health Care & Wellness Committee

SSB 5340

Brief Description: Concerning internet and mail order sales of tobacco products.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Prentice, Regala, Pflug, Shin and Parlette; by request of Attorney General).

Brief Summary of Substitute Bill

- Prohibits a person from causing cigarettes or tobacco products, other than cigars, purchased by mail or through an electronic or telephone network to be shipped to anyone other than a wholesaler or retailer in Washington.

Hearing Date: 3/17/09

Staff: Chris Cordes (786-7103)

Background:

Cigarette Shipping Generally.

Both federal and state law regulate the sale and shipment of cigarettes and other tobacco products. Under the federal Jenkins Act, interstate shippers of cigarettes who ship to anyone other than a licensed distributor must report to the state the names and addresses of customers and the quantities of cigarettes shipped.

Cigarette Sales in Washington.

Youth Access to Tobacco. Under the Minors' Access to Tobacco Products Act, youth access to tobacco products is limited. In addition, a person who sells or gives cigarettes to a minor is guilty of a misdemeanor, and such a seller is also subject to civil penalties. A minor who purchases tobacco products is subject to an infraction, with fines and community restitution.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Cigarette Delivery Sale Law. A person making delivery sales of cigarettes to consumers in Washington, whether the cigarettes are ordered by telephone, mail, or the Internet, must ensure that no sales are made to persons under the age of 18. They must comply with notice, delivery, and tax requirements.

When a purchaser places an order for a delivery sale of cigarettes, the seller must verify the age of the purchaser either by photocopy of the purchaser's identification or through a commercial database. The seller must then mail or e-mail the purchaser a disclosure notice that contains the federal tobacco warning, a warning that sales to minors are unlawful, and a statement that cigarettes are taxable. The statute requires sellers to use a private delivery service that will verify that cigarettes are not delivered to a minor.

A person violating the cigarette delivery sale law is subject to criminal penalties. A seller's first violation is punishable as a class C felony. A second or subsequent offense is punishable as a class B felony. Any delivery service that delivers cigarettes without first verifying the age and identity of the recipient of a delivery sale is guilty of a gross misdemeanor.

Judicial Interpretation of Cigarette Delivery Sale Law.

In 2008 the U.S. Supreme Court held that a cigarette delivery sale statute in Maine was preempted by the Federal Aviation Administration Authorization Act of 1994. The Court found that because the Maine statute required shippers to choose only carriers that would perform the age verification services required by state law, the state statute was within the scope of "price, route, or service" regulations that states are not allowed to impose.

Summary of Bill:

The Washington cigarette delivery sale law is repealed.

A person may not cause cigarettes or tobacco products, other than cigars, purchased by mail or through a computer, telephone, or other electronic network to be shipped to anyone other than a wholesaler or retailer in Washington. A person may not, with knowledge, provide substantial assistance to someone violating this tobacco shipping restriction.

The Attorney General may seek an injunction to restrain a threatened or actual violation of the tobacco shipping restriction.

In addition to any civil or criminal remedy provided by law, a violation of the tobacco shipping restriction is subject to:

- punishment by imprisonment for up to five years or a fine of up to \$5,000, or both, for a knowing violation;
- a civil penalty of up to \$5,000 for each violating shipment, to be imposed by the Attorney General; and
- a Consumer Protection Act action, if the action is brought by the Attorney General.

A court may order a violator to disgorge profits or other gains to be paid to the State Treasurer for deposit in the State General Fund. The state is entitled to recover costs of investigation,

expert witness fees, costs of the action, and reasonable attorneys' fees in any action brought under the tobacco shipping restrictions.

Appropriation: None.

Fiscal Note: Requested 3-11-09.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.