

# SENATE BILL REPORT

## SB 5340

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As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, February 9, 2009

**Title:** An act relating to internet and mail order sales of certain tobacco products.

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

**Sponsors:** Senators Prentice, Regala, Pflug, Shin and Parlette; by request of Attorney General.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 1/29/09, 2/09/09 [DPS-WM, w/oRec].

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5340 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, King and Kline.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Honeyford.

**Staff:** Alison Mendiola (786-7483)

**Background:** The sale of cigarettes to a minor and the purchase of cigarettes by a minor is a violation of state law.

In Washington, under the Delivery Sale of Cigarettes statute, a person who mails, ships or otherwise delivers cigarettes must verify the age of the receiver of cigarettes upon delivery. Additionally, a person who mails, ships, or otherwise delivers cigarettes must contract only with carriers who employ delivery agents who will verify that the receiver of the cigarettes is not a minor upon delivery.

A recent United States Supreme Court case held that Maine's similar statute, which required the tobacco retailers to use a delivery service that confirmed that the recipient must be of legal age to purchase tobacco products, is pre-empted by the Federal Aviation Administration Authorization Act of 1994, as it is "related to" a motor carrier price, route, or service. *Rowe*

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*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.*

*v. New Hampshire Motor Transport Association*, 552 U.S. \_\_\_\_ (2008). The Court found that the state statute requires motor carrier operators to perform certain services that result in enlisting the motor carriers to enforce the state law. Imposing such requirements was held to be pre-empted by federal law.

**Summary of Bill (Recommended Substitute):** Tobacco products, except for cigars, ordered by telephone, mail, or through the Internet may only be shipped to a retailer or wholesaler.

Penalties for violating this provision are as follows:

- a knowing violation is punishable by imprisonment for a maximum of five years or a fine of no more than \$5,000 or both;
- the Attorney General may impose a civil penalty, not to exceed \$5,000 for each violation;
- the Attorney General may seek an injunction in superior court to restrain a threatened or actual violation and to compel compliance; and
- any violation is also a violation of the Consumer Protection Act.

The state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees. If a state court determines that a person has violated this provision, the court must order any profits, gains, gross receipts, or other benefits to be disgorged and paid to the State Treasurer for deposit into the General Fund.

The Delivery Sale of Cigarettes statute is repealed.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):** The bill covers all tobacco products, except cigars.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Due to a recent U.S. Supreme Court case, sellers can ship cigarettes but the state no longer has authority to enforce the statute that requires the delivery service to confirm the recipient's age. The sale of cigarettes would be limited to face-to-face transactions. Other states are taking the same action. Curbing internet sales will help prevent youth access to cigarettes, and people will not be able to avoid paying sales tax. Most people who smoke as adults start as kids and the number of youth purchasing cigarettes online has increased. The bill should be expanded to include all tobacco products.

**Persons Testifying:** PRO: Rusty Fallis, Office of the Attorney General; Mary Seleckey, Department of Health; Lucy Culp, American Heart Association; Sarah Ross-Viles, Public Health Department of Seattle and King County.