

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2071

Chapter 507, Laws of 1993

53rd Legislature
1993 Regular Session

RESTRICTIONS ON MINORS' ACCESS TO TOBACCO PRODUCTS

EFFECTIVE DATE: 7/25/93

Passed by the House April 21, 1993
Yeas 97 Nays 1

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 15, 1993
Yeas 42 Nays 3

JOEL PRITCHARD
President of the Senate

Approved May 18, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2071** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 18, 1993 - 2:38 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2071

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Health Care (originally sponsored by Representatives L. Johnson, Dellwo, Quall, Campbell and Karahalios)

Read first time 03/03/93.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that while present
6 state law prohibits the sale and distribution of tobacco to minors,
7 youth obtain tobacco products with ease. Availability and lack of
8 enforcement put tobacco products in the hands of youth.

9 Federal law requires states to enforce laws prohibiting sale and
10 distribution of tobacco products to minors in a manner that can
11 reasonably be expected to reduce the extent to which the products are
12 available to minors. It is imperative to effectively reduce the sale,
13 distribution, and availability of tobacco products to minors.

14 NEW SECTION. **Sec. 2.** The definitions set forth in RCW 82.24.010
15 shall apply to sections 3 through 14 of this act. In addition, for the
16 purposes of this chapter, unless otherwise required by the context:

17 (1) "Board" means the Washington state liquor control board.

1 (2) "Minor" refers to an individual who is less than eighteen
2 years old.

3 (3) "Public place" means a public street, sidewalk, or park, or
4 any area open to the public in a publicly owned and operated building.

5 (4) "Sample" means a tobacco product distributed to members of the
6 general public at no cost or at nominal cost for product promotion
7 purposes.

8 (5) "Sampler" means a person engaged in the business of sampling
9 other than a retailer.

10 (6) "Sampling" means the distribution of samples to members of the
11 general public in a public place.

12 (7) "Tobacco product" means a product that contains tobacco and is
13 intended for human consumption.

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

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

18 (2) Display a sign concerning the prohibition of tobacco sales to
19 minors.

20 Such sign shall:

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

23 (b) Be designed and produced by the department of health to read:
24 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY
25 PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED
26 FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and

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

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

34 NEW SECTION. **Sec. 5.** No person shall sell or permit to be sold
35 cigarettes not in the original unopened package or container to which
36 the stamps required by RCW 82.24.060 have been affixed.

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

4 NEW SECTION. **Sec. 6.** (1) No person may engage in the business of
5 sampling within the state unless licensed to do so by the board. If a
6 firm contracts with a manufacturer to distribute samples of the
7 manufacturer's products, that firm is deemed to be the person engaged
8 in the business of sampling.

9 (2) The board shall issue a license to a sampler not otherwise
10 disqualified by section 11 of this act upon application and payment of
11 the fee.

12 (3) A sampler's license expires on the thirtieth day of June of
13 each year and must be renewed annually upon payment of the appropriate
14 fee.

15 (4) The board shall annually determine the fee for a sampler's
16 license and each renewal. However, the fee for a manufacturer whose
17 employees distribute samples within the state is five hundred dollars
18 per annum, and the fee for all other samplers must be not less than
19 fifty dollars per annum.

20 (5) A sampler's license entitles the licensee, and employees or
21 agents of the licensee, to distribute samples at any lawful location in
22 the state during the term of the license. A person engaged in sampling
23 under the license shall carry the license or a copy at all times.

24 NEW SECTION. **Sec. 7.** (1) No person may distribute or offer to
25 distribute samples in a public place. This prohibition does not apply
26 to sampling (a) in an area to which persons under the age of eighteen
27 are denied admission, (b) in or at a store or concession to which a
28 retailer's license has been issued, or (c) at or adjacent to a
29 production, repair, or outdoor construction site or facility.

30 (2) Notwithstanding subsection (1) of this section, no person may
31 distribute or offer to distribute samples in or on a public street,
32 sidewalk, or park that is within five hundred feet of a playground,
33 school, or other facility when that facility is being used primarily by
34 persons under the age of eighteen for recreational, educational, or
35 other purposes.

1 NEW SECTION. **Sec. 8.** No person shall give or distribute
2 cigarettes or other tobacco products to a person by a coupon if such
3 coupon is redeemed in any manner that does not require an in-person
4 transaction in a retail store.

5 NEW SECTION. **Sec. 9.** A person under the age of eighteen who
6 purchases or attempts to purchase or obtains or attempts to obtain
7 cigarettes or tobacco products commits a class 3 civil infraction under
8 chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80
9 RCW or participation in a smoking cessation program, or both. This
10 provision does not apply if a person under the age of eighteen, with
11 parental authorization, is participating in a controlled purchase as
12 part of a liquor control board, law enforcement, or local health
13 department activity.

14 NEW SECTION. **Sec. 10.** (1) Where there may be a question of a
15 person's right to purchase or obtain tobacco products by reason of age,
16 the retailer, sampler, or agent thereof, shall require the purchaser to
17 present any one of the following officially issued identification that
18 shows the purchaser's age and bears his or her signature and
19 photograph: Liquor control authority card of identification of a state
20 or province of Canada; driver's license, instruction permit, or
21 identification card of a state or province of Canada; "identocard"
22 issued by the Washington state department of licensing under chapter
23 46.20 RCW; United States military identification; passport; or merchant
24 marine identification 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 The liquor control board shall waive the suspension or revocation of a
29 license if the licensee clearly establishes that he or she acted in
30 good faith to prevent violations and a violation occurred despite the
31 licensee's exercise of due diligence.

32 NEW SECTION. **Sec. 11.** (1) The liquor control board may suspend or
33 revoke a retailer's license held by a business at any location, or may
34 impose a monetary penalty as set forth in subsection (2) of this
35 section, if the liquor control board finds that the licensee has

1 violated RCW 26.28.080(4), or section 3, 4, 5, 6, 7, 8, or 10 of this
2 act.

3 (2) The sanctions that the liquor control board may impose against
4 a person licensed under RCW 82.24.530 and sections 6 and 7 of this act
5 based upon one or more findings under subsection (1) of this section
6 may not exceed the following:

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

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

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

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

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

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

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

24 (c) For violations of section 5 of this act occurring on the
25 licensed premises:

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

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

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

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

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

1 (d) For violations of sections 6 and 7 of this act, a monetary
2 penalty in the amount of three hundred dollars for each violation;

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

5 (3) The liquor control board may impose a monetary penalty upon any
6 person other than a licensed cigarette retailer or licensed sampler if
7 the liquor control board finds that the person has violated RCW
8 26.28.080(4), or section 3, 4, 5, 6, 7, 8, or 10 of this act.

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

12 (a) For violation of RCW 26.28.080(4) or section 3 of this act,
13 fifty dollars for the first violation and one hundred dollars for each
14 subsequent violation;

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

17 (c) For violations of section 5 of this act, one hundred dollars
18 for each violation;

19 (d) For violations of sections 6 and 7 of this act, three hundred
20 dollars for each violation;

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

23 (5) The liquor control board may develop and offer a class for
24 retail clerks and use this class in lieu of a monetary penalty for the
25 clerk's first violation.

26 (6) The liquor control board may issue a cease and desist order to
27 any person who is found by the liquor control board to have violated or
28 intending to violate the provisions of this chapter, RCW 26.28.080(4)
29 or 82.24.500, requiring such person to cease specified conduct that is
30 in violation. The issuance of a cease and desist order shall not
31 preclude the imposition of other sanctions authorized by this statute
32 or any other provision of law.

33 (7) The liquor control board may seek injunctive relief to enforce
34 the provisions of RCW 26.28.080(4) or 82.24.500 or this chapter. The
35 liquor control board may initiate legal action to collect civil
36 penalties imposed under this chapter if the same have not been paid
37 within thirty days after imposition of such penalties. In any action
38 filed by the liquor control board under this chapter, the court may, in

1 addition to any other relief, award the liquor control board reasonable
2 attorneys' fees and costs.

3 (8) All proceedings under subsections (1) through (6) of this
4 section shall be conducted in accordance with chapter 34.05 RCW.

5 NEW SECTION. **Sec. 12.** (1) The liquor control board shall, in
6 addition to the board's other powers and authorities, have the
7 authority to enforce the provisions of this chapter and RCW
8 26.28.080(4) and 82.24.500. The liquor control board shall have full
9 power to revoke or suspend the license of any retailer or wholesaler in
10 accordance with the provisions of section 11 of this act.

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

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

26 (4) The liquor control board may work with local county health
27 departments or districts and local law enforcement agencies to conduct
28 random, unannounced, inspections to assure compliance.

29 NEW SECTION. **Sec. 13.** (1) The youth tobacco prevention account is
30 created in the state treasury. All fees collected pursuant to RCW
31 82.24.520 and 82.24.530 and funds collected by the liquor control board
32 from the imposition of monetary penalties and samplers' fees shall be
33 deposited into this account, except that ten percent of all such fees
34 and penalties shall be deposited in the state general fund.

35 (2) Moneys appropriated from the youth tobacco prevention account
36 to the department of health shall be used by the department of health
37 for implementation of this chapter, including collection and reporting

1 of data regarding enforcement and the extent to which access to tobacco
2 products by youth has been reduced.

3 (3) The department of health shall enter into interagency
4 agreements with the liquor control board to pay the costs incurred, up
5 to thirty percent of available funds, in carrying out its enforcement
6 responsibilities under this chapter. Such agreements shall set forth
7 standards of enforcement, consistent with the funding available, so as
8 to reduce the extent to which tobacco products are available to
9 individuals under the age of eighteen. The agreements shall also set
10 forth requirements for data reporting by the liquor control board
11 regarding its enforcement activities.

12 (4) The department of health and the department of revenue shall
13 enter into an interagency agreement for payment of the cost of
14 administering the tobacco retailer licensing system and for the
15 provision of quarterly documentation of tobacco wholesaler, retailer,
16 and vending machine names and locations.

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

21 NEW SECTION. **Sec. 14.** This chapter preempts political
22 subdivisions from adopting or enforcing requirements for the licensure
23 and regulation of tobacco product promotions and sales within retail
24 stores, except that political subdivisions that have adopted ordinances
25 prohibiting sampling by January 1, 1993, may continue to enforce these
26 ordinances. No political subdivision may: (1) Impose fees or license
27 requirements on retail businesses for possessing or selling cigarettes
28 or tobacco products, other than general business taxes or license fees
29 not primarily levied on tobacco products; or (2) regulate or prohibit
30 activities covered by sections 3 through 9 of this act. This chapter
31 does not otherwise preempt political subdivisions from adopting
32 ordinances regulating the sale, purchase, use, or promotion of tobacco
33 products not inconsistent with chapter ..., Laws of 1993 (this act).

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

36 A fee of (~~ten~~) ninety-three dollars shall accompany each
37 retailer's license application or license renewal application. A

1 separate license is required for each separate location at which the
2 retailer operates. A fee of (~~one~~) thirty additional dollars for each
3 vending machine shall accompany each application or renewal for a
4 license issued to a retail dealer operating a cigarette vending
5 machine.

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

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

14 (1) The department of revenue shall enforce the provisions of this
15 chapter except RCW 82.24.500, which will be enforced by the liquor
16 control board. The department of revenue may adopt, amend, and repeal
17 rules necessary to enforce and administer the provisions of this
18 chapter. The department of revenue has full power and authority to
19 revoke or suspend the license or permit of any wholesale or retail
20 cigarette dealer in the state upon sufficient cause appearing of the
21 violation of this chapter or upon the failure of such licensee to
22 comply with any of the provisions of this chapter.

23 (2) A license shall not be suspended or revoked except upon notice
24 to the licensee and after a hearing as prescribed by the department of
25 revenue. The department of revenue, upon a finding by same, that the
26 licensee has failed to comply with any provision of this chapter or any
27 rule promulgated thereunder, shall, in the case of the first offender,
28 suspend the license or licenses of the licensee for a period of not
29 less than thirty consecutive business days, and, in the case of a
30 second or plural offender, shall suspend the license or licenses for a
31 period of not less than ninety consecutive business days nor more than
32 twelve months, and, in the event the department of revenue finds the
33 offender has been guilty of willful and persistent violations, it may
34 revoke the license or licenses.

35 (3) Any person whose license or licenses have been so revoked may
36 apply to the department of revenue at the expiration of one year for a
37 reinstatement of the license or licenses. The license or licenses may

1 be reinstated by the department of revenue if it appears to the
2 satisfaction of the department of revenue that the licensee will comply
3 with the provisions of this chapter and the rules promulgated
4 thereunder.

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

10 (5) Any determination and order by the department of revenue, and
11 any order of suspension or revocation by the department of revenue of
12 the license or licenses, or refusal to reinstate a license or licenses
13 after revocation shall be reviewable by an appeal to the superior court
14 of Thurston county. The superior court shall review the order or
15 ruling of the department of revenue and may hear the matter de novo,
16 having due regard to the provisions of this chapter and the duties
17 imposed upon the department of revenue.

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

20 Except as specified in section 13 of this act, all fees and
21 penalties received or collected by the department of revenue pursuant
22 to this chapter shall be paid to the state treasurer, to be credited to
23 the general fund.

24 NEW SECTION. **Sec. 19.** Sections 2 through 14 of this act shall
25 constitute a new chapter in Title 70 RCW.

26 NEW SECTION. **Sec. 20.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

Passed the House April 21, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 18, 1993.

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