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HOUSE BILL 2626

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State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Cody, Dyer and Chopp; by request of Governor Lowry

Read first time 01/15/96. Referred to Committee on Health Care.

1            AN ACT Relating to regulation and control of tobacco products;  
2 amending RCW 70.155.010, 70.155.030, 70.155.040, 70.155.050,  
3 70.155.100, 70.155.110, 82.24.500, and 82.24.550; repealing RCW  
4 70.155.060 and 82.24.270; and prescribing penalties.

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

6            **Sec. 1.** RCW 70.155.010 and 1993 c 507 s 2 are each amended to read  
7 as follows:

8            The definitions set forth in RCW 82.24.010 shall apply to RCW  
9 70.155.020 through 70.155.130. In addition, for the purposes of this  
10 chapter, unless otherwise required by the context:

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

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

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

16            (4) ~~"Sample" means a tobacco product distributed to members of the~~  
17 ~~general public at no cost or at nominal cost for product promotion~~  
18 ~~purposes.~~

1       ~~(5) "Sampler" means a person engaged in the business of sampling~~  
2 ~~other than a retailer.~~

3       ~~(6) "Sampling" means the distribution of samples to members of the~~  
4 ~~general public in a public place.~~

5       ~~(7)) "Package" or "container" means a package or container that~~  
6 ~~holds twenty cigarettes.~~

7       (4) "Tobacco product" means a product that contains tobacco and is  
8 intended for human consumption and as further defined in RCW  
9 82.26.010(1).

10       **Sec. 2.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to read  
11 as follows:

12       (1) No person shall sell or permit to be sold any tobacco product  
13 through any device that mechanically dispenses tobacco products unless  
14 the device is located fully within premises from which minors are  
15 prohibited or in industrial worksites where minors are not employed and  
16 not less than ten feet from all entrance or exit ways to and from each  
17 premise. The board shall adopt rules that allow an exception to the  
18 requirement that a device be located not less than ten feet from all  
19 entrance or exit ways to and from a premise if it is architecturally  
20 impractical for the device to be located not less than ten feet from  
21 all entrance and exit ways.

22       (2) All retail sales of cigarettes or tobacco products must be in-  
23 person transactions in a retail store, except for vending machine sales  
24 at authorized locations as authorized in subsection (1) of this  
25 section. Mail order sales or deliveries of cigarettes or tobacco  
26 products are prohibited.

27       (3) There shall be no advertisement of cigarettes or tobacco  
28 products in any wholly or partially state-owned or state-funded  
29 location.

30       **Sec. 3.** RCW 70.155.040 and 1993 c 507 s 5 are each amended to read  
31 as follows:

32       (1) No person shall sell or permit to be sold single cigarettes  
33 ((not)). All cigarettes must be sold in ((the)) original, unopened  
34 packages or containers ((to which the stamps required by RCW 82.24.060  
35 have been affixed)).

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

4       **Sec. 4.** RCW 70.155.050 and 1993 c 507 s 6 are each amended to read  
5 as follows:

6       (~~(1)~~) No person may engage in the business of sampling cigarettes  
7 or tobacco products within the state (~~unless licensed to do so by the~~  
8 ~~board. If a firm contracts with a manufacturer to distribute samples~~  
9 ~~of the manufacturer's products, that firm is deemed to be the person~~  
10 ~~engaged in the business of sampling.~~

11       ~~(2) The board shall issue a license to a sampler not otherwise~~  
12 ~~disqualified by RCW 70.155.100 upon application and payment of the fee.~~

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

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

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

25       **Sec. 5.** RCW 70.155.100 and 1993 c 507 s 11 are each amended to  
26 read as follows:

27       (1) The liquor control board may suspend or revoke a retailer's  
28 license held by a business at any location, or may impose a monetary  
29 penalty as set forth in subsection (2) of this section, if the liquor  
30 control board finds that the licensee has violated RCW  
31 26.28.080(~~(4)~~), or 70.155.020, 70.155.030, 70.155.040, 70.155.050,  
32 (~~70.155.060~~) 70.155.070, or 70.155.090.

33       (2) The sanctions that the liquor control board may impose against  
34 a person licensed under RCW 82.24.530 and 70.155.050 (~~and 70.155.060~~)  
35 based upon one or more findings under subsection (1) of this section  
36 may not be less than or exceed the following:

37       (a) For violation of RCW 26.28.080(~~(4)~~) or 70.155.020:

1 (i) A monetary penalty of not less than one hundred dollars and not  
2 more than two hundred fifty dollars for the first violation within any  
3 two-year period;

4 (ii) A monetary penalty of not less than three hundred dollars and  
5 not more than five hundred dollars for the second violation within any  
6 two-year period;

7 (iii) A monetary penalty of not less than one thousand dollars and  
8 not more than one thousand five hundred dollars and suspension of the  
9 license for a period of six months for the third violation within any  
10 two-year period;

11 (iv) A monetary penalty of not less than one thousand five hundred  
12 dollars and not more than two 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 RCW 70.155.030, a monetary penalty (~~in the~~  
19 ~~amount~~) of not less than one hundred dollars and not more than two  
20 hundred fifty dollars for each day upon which such violation occurred;

21 (c) For violations of RCW 70.155.040 occurring on the licensed  
22 premises:

23 (i) A monetary penalty of not less than one hundred dollars and not  
24 more than two hundred fifty dollars for the first violation within any  
25 two-year period;

26 (ii) A monetary penalty of not less than three hundred dollars and  
27 not more than five hundred dollars for the second violation within any  
28 two-year period;

29 (iii) A monetary penalty of not less than one thousand dollars and  
30 not more than one thousand five hundred dollars and suspension of the  
31 license for a period of six months for the third violation within any  
32 two-year period;

33 (iv) A monetary penalty of not less than one thousand five hundred  
34 dollars and not more than two thousand five hundred dollars and  
35 suspension of the license for a period of twelve months for the fourth  
36 violation within any two-year period;

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

1 (d) For violations of RCW 70.155.050 (~~(and 70.155.060)~~), a monetary  
2 penalty (~~(in the amount)~~) of not less than three hundred dollars and  
3 not more than five hundred dollars for each violation;

4 (e) For violations of RCW 70.155.070, a monetary penalty (~~(in the~~  
5 ~~amount)~~) of not less than one thousand dollars and not more than two  
6 thousand five hundred dollars for each violation.

7 (3) The liquor control board may impose a monetary penalty upon any  
8 person other than a licensed cigarette retailer (~~(or licensed sampler)~~)  
9 if the liquor control board finds that the person has violated RCW  
10 26.28.080(~~(+4)~~), or 70.155.020, 70.155.030, 70.155.040, 70.155.050,  
11 (~~(70.155.060)~~) 70.155.070, or 70.155.090.

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

15 (a) For violation of RCW 26.28.080(~~(+4)~~) or 70.155.020, not less  
16 than fifty dollars and not more than one hundred dollars for the first  
17 violation and not less than one hundred dollars and not more than two  
18 hundred fifty dollars for each subsequent violation;

19 (b) For violations of RCW 70.155.030, not less than one hundred  
20 dollars and not more than two hundred fifty dollars for each day upon  
21 which such violation occurred;

22 (c) For violations of RCW 70.155.040, not less than one hundred  
23 dollars and not more than two hundred fifty dollars for each violation;

24 (d) For violations of RCW 70.155.050 (~~(and 70.155.060)~~), not less  
25 than three hundred dollars and not more than five hundred dollars for  
26 each violation;

27 (e) For violations of RCW 70.155.070, not less than one thousand  
28 dollars and not more than two thousand five hundred dollars for each  
29 violation.

30 (5) The liquor control board may impose sanctions against a person  
31 licensed under RCW 82.24.530 or this chapter for any violation of  
32 chapter 314-10 WAC for which a statutory penalty is not proscribed in  
33 an amount of:

34 (a) A monetary penalty of not less than one hundred dollars and not  
35 more than two hundred fifty dollars for the first violation within any  
36 two-year period;

37 (b) A monetary penalty of not less than three hundred dollars and  
38 not more than five hundred dollars for the second violation within any  
39 two-year period; and

1 (c) A monetary penalty of not less than one thousand dollars and  
2 not more than two thousand five hundred dollars or suspension of the  
3 license privilege for a period not to exceed one year, or both, for a  
4 third or any subsequent violation within any two-year period.

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

8 ~~((+6))~~ (7) The liquor control board may issue a cease and desist  
9 order to any person who is found by the liquor control board to have  
10 violated or intending to violate the provisions of this chapter, RCW  
11 26.28.080~~((+4))~~ or 82.24.500, requiring such person to cease specified  
12 conduct that is in violation. The issuance of a cease and desist order  
13 shall not preclude the imposition of other sanctions authorized by this  
14 statute or any other provision of law.

15 ~~((+7))~~ (8) The liquor control board may seek injunctive relief to  
16 enforce the provisions of RCW 26.28.080~~((+4))~~ or 82.24.500 or this  
17 chapter. The liquor control board may initiate legal action to collect  
18 civil penalties imposed under this chapter if the same have not been  
19 paid within thirty days after imposition of such penalties. In any  
20 action filed by the liquor control board under this chapter, the court  
21 may, in addition to any other relief, award the liquor control board  
22 reasonable attorneys' fees and costs.

23 ~~((+8))~~ (9) All proceedings under subsections (1) through ~~((+6))~~  
24 (7) of this section shall be conducted in accordance with chapter 34.05  
25 RCW.

26 **Sec. 6.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
27 read as follows:

28 (1) The liquor control board shall, in addition to the board's  
29 other powers and authorities, have the authority to enforce the  
30 provisions of this chapter and RCW 26.28.080~~((+4))~~ and 82.24.500. The  
31 liquor control board shall have full power to revoke or suspend the  
32 license of any retailer or wholesaler in accordance with the provisions  
33 of RCW 70.155.100.

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

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

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

15 (5) For the purpose of enforcing the provisions of this title  
16 according to legislative intent, the liquor control board may adopt  
17 such rules as are deemed necessary or advisable.

18 **Sec. 7.** RCW 82.24.500 and 1986 c 321 s 4 are each amended to read  
19 as follows:

20 (1) No person may engage in or conduct the business of purchasing,  
21 selling, consigning, or distributing cigarettes or tobacco products as  
22 defined in Title 82 RCW in this state without a license under this  
23 chapter.

24 (2) Possession of cigarettes or tobacco products without a license  
25 with intent to sell is a violation of this section.

26 (3) A person whose license has been suspended or revoked shall not  
27 sell cigarettes or tobacco products or permit cigarettes or tobacco  
28 products to be sold during the period of such suspension or revocation  
29 on the premises occupied by the person or upon other premises  
30 controlled by the person or others or in any other manner or form  
31 whatever.

32 (4) A violation of this section is a misdemeanor.

33 **Sec. 8.** RCW 82.24.550 and 1993 c 507 s 17 are each amended to read  
34 as follows:

35 (1) The department of revenue shall enforce the provisions of this  
36 chapter except RCW 82.24.500, which will be enforced by the liquor  
37 control board. The department of revenue may adopt, amend, and repeal

1 rules necessary to enforce and administer the provisions of this  
2 chapter. The department of revenue has full power and authority to  
3 revoke or suspend the license or permit of any wholesale or retail  
4 ((cigarette)) tobacco dealer in the state upon sufficient cause  
5 appearing of the violation of this chapter or upon the failure of such  
6 licensee to comply with any of the provisions of this chapter.

7 (2) A license shall not be suspended or revoked except upon notice  
8 to the licensee and after a hearing as prescribed by the department of  
9 revenue. The department of revenue, upon a finding by same, that the  
10 licensee has failed to comply with any provision of this chapter or any  
11 rule promulgated thereunder, shall, in the case of the first offender,  
12 suspend the license or licenses of the licensee for a period of not  
13 less than thirty consecutive business days, and, in the case of a  
14 second or plural offender, shall suspend the license or licenses for a  
15 period of not less than ninety consecutive business days nor more than  
16 twelve months, and, in the event the department of revenue finds the  
17 offender has been guilty of willful and persistent violations, it may  
18 revoke the license or licenses.

19 (3) Any person whose license or licenses have been so revoked may  
20 apply to the department of revenue at the expiration of one year for a  
21 reinstatement of the license or licenses. The license or licenses may  
22 be reinstated by the department of revenue if it appears to the  
23 satisfaction of the department of revenue that the licensee will comply  
24 with the provisions of this chapter and the rules promulgated  
25 thereunder.

26 (4) A person whose license has been suspended or revoked shall not  
27 sell cigarettes or tobacco products or permit cigarettes or tobacco  
28 products to be sold during the period of such suspension or revocation  
29 on the premises occupied by the person or upon other premises  
30 controlled by the person or others or in any other manner or form  
31 whatever.

32 (5) Any determination and order by the department of revenue, and  
33 any order of suspension or revocation by the department of revenue of  
34 the license or licenses, or refusal to reinstate a license or licenses  
35 after revocation shall be reviewable by an appeal to the superior court  
36 of Thurston county. The superior court shall review the order or  
37 ruling of the department of revenue and may hear the matter de novo,  
38 having due regard to the provisions of this chapter and the duties  
39 imposed upon the department of revenue.



1        NEW SECTION.   **Sec. 9.**   The following acts or parts of acts are each  
2 repealed:

3        (1) RCW 70.155.060 and 1993 c 507 s 7; and

4        (2) RCW 82.24.270 and 1995 c 278 s 12.

--- **END** ---