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ENGROSSED SUBSTITUTE HOUSE BILL 1746

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State of Washington

55th Legislature

1997 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Sherstad, Morris, Radcliff, Hatfield, D. Schmidt, Grant, Pennington, Sullivan, Koster, Mulliken, Wood, L. Thomas, Scott, Carrell, Doumit, Sheahan, Huff, Kastama, Boldt, Hickel, McMorris, Thompson, Cooke and Dunshee)

Read first time 03/05/97.

1 AN ACT Relating to making minor possession of tobacco a class 3  
2 civil infraction and clarifying penalties for violation of current laws  
3 regarding youth access to tobacco; amending RCW 70.155.020, 70.155.080,  
4 70.155.090, 70.155.110, 70.155.120, and 26.28.080; adding new sections  
5 to chapter 70.155 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to read  
8 as follows:

9 A person who holds a license issued under RCW 82.24.520 or  
10 82.24.530 shall:

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

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

15 Such sign shall:

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

18 (b) Be designed and produced by the department of health to read:  
19 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY

1 PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE  
2 (~~PENALIZED~~) FINED AND BE REQUIRED TO PARTICIPATE IN 4 HOURS OF  
3 COMMUNITY SERVICE FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED;  
4 and

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

6 **Sec. 2.** RCW 70.155.080 and 1993 c 507 s 9 are each amended to read  
7 as follows:

8 (1) A person under the age of eighteen who purchases or attempts to  
9 purchase, possesses or attempts to possess, or obtains or attempts to  
10 obtain cigarettes or tobacco products commits a class 3 civil  
11 infraction under chapter 7.80 RCW and is subject to a fine as set out  
12 in chapter 7.80 RCW (~~(or)~~) and participation in four hours of community  
13 service. The court may also require participation in a smoking  
14 cessation program(~~(, or both)~~). This provision does not apply if a  
15 person under the age of eighteen, with parental authorization, is  
16 participating in a controlled purchase as part of a liquor control  
17 board, law enforcement, or (~~(local health department)~~) licensee under  
18 RCW 82.24.530 activity.

19 (2) Municipal and district courts within the state have  
20 jurisdiction for enforcement of this section. All fines collected  
21 under this section shall be retained by the court of jurisdiction.

22 **Sec. 3.** RCW 70.155.090 and 1993 c 507 s 10 are each amended to  
23 read as follows:

24 (1) Where there may be a question of a person's right to purchase  
25 or obtain tobacco products by reason of age, the retailer, sampler, or  
26 agent thereof, shall require the purchaser to present any one of the  
27 following officially issued identification that shows the purchaser's  
28 age and bears his or her signature and photograph: Liquor control  
29 authority card of identification of a state or province of Canada;  
30 driver's license, instruction permit, or identification card of a state  
31 or province of Canada; "identocard" issued by the Washington state  
32 department of licensing under chapter 46.20 RCW; United States military  
33 identification; passport; or merchant marine identification card issued  
34 by the United States coast guard.

35 (2) It is a defense to a prosecution under RCW 26.28.080(~~(+4)~~)  
36 that the person making a sale reasonably relied on any of the  
37 officially issued identification as defined in subsection (1) of this

1 section. ((The liquor control board shall waive the suspension or  
2 revocation of a license if the licensee clearly establishes that he or  
3 she acted in good faith to prevent violations and a violation occurred  
4 despite the licensee's exercise of due diligence.))

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.155 RCW  
6 to read as follows:

7 (1) The liquor control board may waive the suspension or revocation  
8 of a license and any monetary penalty if the licensee clearly  
9 establishes that he or she acted in good faith to prevent violations  
10 and a violation occurred despite the licensee's exercise of due  
11 diligence.

12 (2) It is a defense to a prosecution under RCW 26.28.080 that the  
13 licensee:

14 (a) Posted the required signs under RCW 70.155.020; and

15 (b) Trained employees with the employee's signature on file that  
16 they were trained on how not to sell, give, or permit to be sold or  
17 given to any person under the age of eighteen years any cigar,  
18 cigarette, cigarette paper or wrapper, or tobacco in any form.

19 **Sec. 5.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
20 read as follows:

21 (1) The liquor control board shall, in addition to the board's  
22 other powers and authorities, have the authority to enforce the  
23 provisions of this chapter and RCW 26.28.080((+4)) and 82.24.500. The  
24 liquor control board shall have full power to revoke or suspend the  
25 license of any retailer or wholesaler in accordance with the provisions  
26 of RCW 70.155.100.

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

31 (3) For the purpose of enforcing the provisions of this chapter and  
32 RCW 26.28.080((+4)) and 82.24.500, a peace officer or enforcement  
33 officer of the liquor control board who has reasonable grounds to  
34 believe a person observed by the officer purchasing, attempting to  
35 purchase, or in possession of tobacco products is under the age of  
36 eighteen years of age, may detain such person for a reasonable period  
37 of time and in such a reasonable manner as is necessary to determine

1 the person's true identity and date of birth. Further, tobacco  
2 products possessed by persons under the age of eighteen years of age  
3 are considered contraband and may be seized by a peace officer or  
4 enforcement officer of the liquor control board.

5 (4) The liquor control board may work with (~~local county health~~  
6 ~~departments or districts and~~) local law enforcement agencies to  
7 conduct random, unannounced(~~(7)~~) inspections in accordance with  
8 guidelines adopted by the board to assure compliance.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.155 RCW  
10 to read as follows:

11 A person who holds a license issued under RCW 82.24.530 may employ  
12 a person under the age of eighteen to conduct random, unannounced  
13 inspections to assure compliance without penalties.

14 **Sec. 7.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to  
15 read as follows:

16 (1) The youth tobacco prevention account is created in the state  
17 treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530  
18 and funds collected by the liquor control board from the imposition of  
19 monetary penalties and samplers' fees shall be deposited into this  
20 account, except that ten percent of all such fees and penalties shall  
21 be deposited in the state general fund.

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

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

36 (4) The department of health and the department of revenue shall  
37 enter into an interagency agreement for payment of the cost of

1 administering the tobacco retailer licensing system and for the  
2 provision of quarterly documentation of tobacco wholesaler, retailer,  
3 and vending machine names and locations.

4 (5) The department of health shall, within up to (~~seventy~~) fifty  
5 percent of available funds, provide grants to local health departments  
6 (~~or other local community agencies~~) to develop and implement  
7 coordinated tobacco intervention strategies to prevent and reduce  
8 tobacco use by youth. Local health departments shall not contract with  
9 local community agencies to develop and implement coordinated tobacco  
10 intervention strategies to prevent and reduce tobacco use by youth.

11 (6) No moneys deposited in or appropriated from the youth tobacco  
12 prevention account may be used to fund private groups or individuals by  
13 means of grants, contracts, payments, or other transfers of funds for  
14 lobbying or public relations services.

15 **Sec. 8.** RCW 26.28.080 and 1994 sp.s. c 7 s 437 are each amended to  
16 read as follows:

17 Every person, including a parent or guardian, who sells or gives,  
18 or permits to be sold or given to any person under the age of eighteen  
19 years any cigar, cigarette, cigarette paper or wrapper, or tobacco in  
20 any form is guilty of a gross misdemeanor.

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

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