CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1435

Chapter 154, Laws of 2009

61st Legislature
2009 Regular Session

CIGARETTE AND TOBACCO PRODUCTS LICENSES--ADMINISTRATION

EFFECTIVE DATE: 07/26/09

Passed by the House March 10, 2009
Yeas 96  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 7, 2009
Yeas 47  Nays 0

BRAD OWEN
President of the Senate

Approved April 21, 2009, 2:48 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1435 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
April 22, 2009

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington

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

Sec. 1. RCW 82.24.510 and 2001 c 235 s 8 are each amended to read as follows:

(1) The licenses issuable under this chapter are as follows:

(a) A wholesaler's license.

(b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The ((department of revenue)) board shall adopt rules regarding the regulation of the licenses. The ((department of revenue)) board may refrain from the issuance of any license under this chapter if the ((department)) board has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the ((department)) board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In

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addition, for the purpose of reviewing an application for a wholesaler's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's master license expiration, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 or 82.26 RCW, the background check done under the authority of chapter 66.24 or 82.26 RCW satisfies the requirements of this section.

(4) Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board made pursuant thereto.

(5) Each license and any other evidence of the license that the board requires must be exhibited in each place of business for which it is issued and in the manner required for the display of a master license.

Sec. 2. RCW 82.24.550 and 2005 c 180 s 19 are each amended to read as follows:
(1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The board may revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of one year from the date of revocation of the license or licenses. The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

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

(7) Any determination and order by the ((department)) board, and
any order of suspension or revocation by the ((department)) board of
the license or licenses issued under this chapter, or refusal to
reinstate a license or licenses after revocation shall be reviewable by
an appeal to the superior court of Thurston county. The superior court
shall review the order or ruling of the ((department)) board and may
hear the matter de novo, having due regard to the provisions of this
chapter and the duties imposed upon ((the department and)) the board.

(8) If the board makes an initial decision to deny a license or
renewal, or suspend or revoke a license, the applicant may request a
hearing subject to the applicable provisions under Title 34 RCW.

(9) For purposes of this section, "tobacco products" has the same
meaning as in RCW 82.26.010.

Sec. 3. RCW 82.26.060 and 2005 c 180 s 4 are each amended to read
as follows:

(1) Every distributor shall keep at each place of business complete
and accurate records for that place of business, including itemized
invoices, of tobacco products held, purchased, manufactured, brought in
or caused to be brought in from without the state, or shipped or
transported to retailers in this state, and of all sales of tobacco
products made.

(2) These records shall show the names and addresses of purchasers,
the inventory of all tobacco products, and other pertinent papers and
documents relating to the purchase, sale, or disposition of tobacco
products. All invoices and other records required by this section to
be kept shall be preserved for a period of five years from the date of
the invoices or other documents or the date of the entries appearing in
the records.

(3) At any time during usual business hours the department, board,
or its duly authorized agents or employees, may enter any place of
business of a distributor, without a search warrant, and inspect the
premises, the records required to be kept under this chapter, and the
tobacco products contained therein, to determine whether or not all the
provisions of this chapter are being fully complied with. If the
department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises shall be subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation, by the department or board.

Sec. 4. RCW 82.26.150 and 2005 c 180 s 11 are each amended to read as follows:

(1) The licenses issuable by the (department) board under this chapter are as follows:
   (a) A distributor's license; and
   (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The (department) board may adopt rules regarding the regulation of the licenses. The (department) board may refuse to issue any license under this chapter if the (department) board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the (department) board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the (department) board may consider criminal (convictions) conduct of the applicant (related to the selling of tobacco products), including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The (department) board may, in its discretion, issue or refuse to issue the distributor's license or retailer's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license or a retailer's license under this section without first undergoing a criminal background check. The background check shall be performed by
the board and must disclose any criminal (convictions related to the selling of tobacco products) conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter shall expire on the master license expiration date. The license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the (department) board adopted pursuant to this chapter.

(5) Each license and any other evidence of the license (as the department requires shall) required under this chapter must be exhibited in (the) each place of business for which it is issued and in the manner required for the display of a master license.

Sec. 5. RCW 82.26.180 and 2005 c 180 s 15 are each amended to read as follows:

The (department) board shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the (department's) board's official internet web site. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request.

Sec. 6. RCW 82.26.190 and 2005 c 180 s 16 are each amended to read as follows:

(1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued (by the department) under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010(3)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.
(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, shall not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter.
Sec. 7. RCW 82.26.210 and 2005 c 180 s 14 are each amended to read as follows:

A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the board a list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. A manufacturer's representative is not authorized to distribute or sell tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the board a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products.

Sec. 8. RCW 82.26.220 and 2005 c 180 s 18 are each amended to read as follows:

(1) The board shall enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The board may revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or of any rule adopted under it, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve
months, and in the event the ((department)) board finds the licensee
has been guilty of willful and persistent violations, it may revoke the
license or licenses.

(4) Any licenses issued under chapter 82.24 RCW to a person whose
license or licenses have been suspended or revoked under this section
shall also be suspended or revoked during the period of suspension or
revocation under this section.

(5) Any person whose license or licenses have been revoked under
this section may ((apply)) reapply to the ((department)) board at the
expiration of one year ((for a reinstatement)) of the license or
licenses. The license or licenses may be ((reinstated)) approved by
the ((department)) board if it appears to the satisfaction of the
((department)) board that the licensee will comply with the provisions
of this chapter and the rules adopted under it.

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

(7) Any determination and order by the ((department)) board, and
any order of suspension or revocation by the ((department)) board of
the license or licenses issued under this chapter, or refusal to
reinstate a license or licenses after revocation is reviewable by an
appeal to the superior court of Thurston county. The superior court
shall review the order or ruling of the ((department)) board and may
hear the matter de novo, having due regard to the provisions of this
chapter and the duties imposed upon ((the department and)) the board.

(8) If the board makes an initial decision to deny a license or
renewal, or suspend or revoke a license, the applicant may request a
hearing subject to the applicable provisions under Title 34 RCW.

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