
ENGROSSED SUBSTITUTE SENATE BILL 6407

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Health & Human Services (originally sponsored by Senators Talmadge, Oke and Pelz)

Read first time 02/04/94.

1 AN ACT Relating to health and safety; amending RCW 70.155.010 and
2 70.155.100; adding a new section to chapter 70.54 RCW; adding a new
3 section to chapter 70.160 RCW; adding a new chapter to Title 70 RCW;
4 creating a new section; repealing RCW 70.155.050, 70.155.060, and
5 70.155.070; prescribing penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.54 RCW
8 to read as follows:

9 (1) Except as provided in subsection (3) of this section, tobacco
10 products may not be sold or distributed in those portions of buildings
11 or vessels that are publicly owned or leased.

12 (2) A violation of this section is grounds for the termination or
13 nonrenewal of a contract for occupancy or rental of any area of any
14 publicly owned or leased building or vessel.

15 (3) This section does not apply to correctional institutions.
16 However, the secretary of corrections or a local correctional
17 institution authority may prohibit sales and distributions of tobacco
18 products if the prohibition applies equally to employees and inmates.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.160 RCW
2 to read as follows:

3 This chapter does not preempt local regulation of indoor smoking
4 that is as restrictive or more restrictive than this chapter.

5 NEW SECTION. **Sec. 3.** Section 1 of this act shall take effect
6 January 1, 1995.

7 NEW SECTION. **Sec. 4.** The legislature finds:

8 (1) The leading cause of preventable death is tobacco use.
9 Further, the legislature recognizes the high rate of tobacco use by
10 youth in our state.

11 (2) The giving of free samples and the use of coupons for the
12 provision of cigarettes and tobacco products at no cost constitute
13 methods of distribution of such products, rather than advertisement or
14 promotion of such products, and are the proper subject of prohibition
15 or regulation.

16 (3) Cigarettes and other tobacco products are being distributed to
17 minors by means of free samples and no-cost coupons, and prohibition of
18 such means of distribution is required in the interest of public
19 health.

20 (4) Enforcement of an age-related restriction on the distribution
21 of cigarettes and tobacco product samples and redemption of no-cost
22 coupons is impractical and ineffective.

23 NEW SECTION. **Sec. 5.** (1) The following acts are prohibited:

24 (a) Giving away cigarettes or tobacco products, by any
25 manufacturer, wholesaler, retailer, or its employees, to any person
26 whether in person or through the mail; and

27 (b) Providing cigarettes or tobacco products, by any manufacturer,
28 wholesaler, retailer, or its employees, to any person by a coupon at no
29 cost.

30 (2) The prohibition in subsection (1) of this section only applies
31 to cigarettes, tobacco products, and coupons for those products, when
32 given away for free. It does not apply to any other gifts that are
33 combined with a retail transaction for cigarettes or tobacco products.

34 (3) For the purposes of this chapter, "cigarettes" has the meaning
35 given in RCW 82.24.010 and "tobacco products" has the meaning given in
36 RCW 82.26.010.

1 NEW SECTION. **Sec. 6.** (1) The local health officer may take any or
2 all of the following actions to enforce section 5 of this act if the
3 health officer finds that there has been a violation of section 5 of
4 this act:

5 (a) Suspend or revoke a retailer's license held by a business at a
6 location within the health officer's geographical jurisdiction.

7 (b) Impose a civil penalty of three hundred dollars for each
8 violation upon any person other than a licensed cigarette retailer.

9 (c) Issue a cease and desist order to any person who is found by
10 the local health officer to have violated or intended to violate
11 section 5 of this act which requires 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 chapter or any other provision of law.

15 (d) Seek injunctive relief to enforce section 5 of this act. The
16 health officer may initiate legal action to collect civil penalties
17 imposed under this chapter if the penalties have not been paid within
18 thirty days after they are imposed. In any action filed by the local
19 health officer under the provisions of this chapter, the court may, in
20 addition to any other relief, award the health officer reasonable
21 attorneys' fees and costs.

22 (2) Any order issued by the local health officer under this section
23 may be appealed to the local board of health. The appeal shall be
24 conducted de novo, and the health officer shall have the burden of
25 proving the violation or violations set forth in the order by a
26 preponderance of the evidence.

27 (3) Funds collected by local health departments or districts from
28 imposition of civil penalties shall be retained by them and used for
29 implementing programs intended to prevent the use of cigarettes and
30 tobacco products or promote the cessation of their use.

31 NEW SECTION. **Sec. 7.** The provisions of this chapter are not
32 exclusive, and any political subdivision of the state of Washington may
33 adopt additional provisions which are not less restrictive than the
34 provisions of this chapter.

35 **Sec. 8.** RCW 70.155.010 and 1993 c 507 s 2 are each amended to read
36 as follows:

1 The definitions set forth in RCW 82.24.010 shall apply to RCW
2 70.155.020 through 70.155.130. In addition, for the purposes of this
3 chapter, unless otherwise required by the context:

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

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

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

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

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

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

16 (~~7)) "Tobacco product" means a product that contains tobacco and~~
17 ~~is intended for human consumption.~~

18 **Sec. 9.** RCW 70.155.100 and 1993 c 507 s 11 are each amended to
19 read as follows:

20 (1) The liquor control board may suspend or revoke a retailer's
21 license held by a business at any location, or may impose a monetary
22 penalty as set forth in subsection (2) of this section, if the liquor
23 control board finds that the licensee has violated RCW 26.28.080(4), or
24 70.155.020, 70.155.030, 70.155.040, (~~70.155.050, 70.155.060,~~
25 ~~70.155.070, or~~) 70.155.090, or section 5 of this act.

26 (2) The sanctions that the liquor control board may impose against
27 a person licensed under RCW 82.24.530 (~~and 70.155.050 and 70.155.060~~)
28 based upon one or more findings under subsection (1) of this section
29 may not exceed the following:

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

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

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

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

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

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

7 (b) For violations of RCW 70.155.030, a monetary penalty in the
8 amount of one hundred dollars for each day upon which such violation
9 occurred;

10 (c) For violations of RCW 70.155.040 occurring on the licensed
11 premises:

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

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

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

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

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

25 (d) For violations of ~~((RCW 70.155.050 and 70.155.060))~~ section 5
26 of this act, a monetary penalty in the amount of three hundred dollars
27 for each violation(~~(+~~

28 ~~(e) For violations of RCW 70.155.070, a monetary penalty in the~~
29 ~~amount of one thousand dollars for each violation)).~~

30 (3) The liquor control board may impose a monetary penalty upon any
31 person other than a licensed cigarette retailer (~~(or licensed sampler)~~)
32 if the liquor control board finds that the person has violated RCW
33 26.28.080(4), or 70.155.020, 70.155.030, 70.155.040, (~~(70.155.050,~~
34 ~~70.155.060, 70.155.070, or)~~) 70.155.090, or section 5 of this act.

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

1 (a) For violation of RCW 26.28.080(4) or 70.155.020, fifty dollars
2 for the first violation and one hundred dollars for each subsequent
3 violation;

4 (b) For violations of RCW 70.155.030, one hundred dollars for each
5 day upon which such violation occurred;

6 (c) For violations of RCW 70.155.040, one hundred dollars for each
7 violation;

8 (d) For violations of ((RCW 70.155.050 and 70.155.060)) section 5
9 of this act, three hundred dollars for each violation((+)

10 (~~e) For violations of RCW 70.155.070, one thousand dollars for each~~
11 ~~violation~~)).

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

15 (6) The liquor control board may issue a cease and desist order to
16 any person who is found by the liquor control board to have violated or
17 intending to violate the provisions of this chapter, RCW 26.28.080(4)
18 or 82.24.500, requiring such person to cease specified conduct that is
19 in violation. The issuance of a cease and desist order shall not
20 preclude the imposition of other sanctions authorized by this statute
21 or any other provision of law.

22 (7) The liquor control board may seek injunctive relief to enforce
23 the provisions of RCW 26.28.080(4) or 82.24.500 or this chapter. The
24 liquor control board may initiate legal action to collect civil
25 penalties imposed under this chapter if the same have not been paid
26 within thirty days after imposition of such penalties. In any action
27 filed by the liquor control board under this chapter, the court may, in
28 addition to any other relief, award the liquor control board reasonable
29 attorneys' fees and costs.

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

32 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
33 each repealed:

34 (1) RCW 70.155.050 and 1993 c 507 s 6;

35 (2) RCW 70.155.060 and 1993 c 507 s 7; and

36 (3) RCW 70.155.070 and 1993 c 507 s 8.

1 NEW SECTION. **Sec. 11.** Sections 5 through 7 of this act shall
2 constitute a new chapter in Title 70 RCW.

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