
SUBSTITUTE SENATE BILL 5881

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Thibaudeau, Oke, Costa and Winsley; by request of Governor Locke and Attorney General)

Read first time 01/17/2000.

1 AN ACT Relating to regulation of tobacco products under the access
2 to minors statutes; amending RCW 70.155.020, 70.155.030, 70.155.040,
3 70.155.050, 70.155.100, 70.155.110, 82.24.110, and 82.24.130; adding a
4 new section to chapter 70.155 RCW; and prescribing penalties.

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

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

8 A person who holds a license issued under RCW ((82.24.520))
9 82.24.510(1)(b) or 82.24.530 shall:

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

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

14 Such sign ((shall)) must:

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

17 (b) Be designed and produced by the department of health to read:
18 "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 PENALIZED
2 FOR PURCHASING OR POSSESSING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and
3 (c) Be provided free of charge by the liquor control board.

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

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

16 (2) Except as provided in subsection (1) of this section, beginning
17 July 1, 2001, self-service displays of tobacco products are prohibited.
18 All in-store tobacco products must be sold from behind the counter or
19 from within locked display units. This section does not apply to
20 retailers who sell tobacco products exclusively. Further, this section
21 does not apply to sales from within premises where minors are
22 prohibited by statute.

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

25 (1) No person shall sell or permit to be sold cigarettes not in the
26 original unopened packages or containers to which the stamps required
27 by RCW 82.24.060 have been affixed.

28 (2) Packages of fewer than twenty cigarettes may be sold only in
29 premises where minors are prohibited by statute.

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

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

35 (1) No person may engage in the business of sampling tobacco
36 products within the state unless licensed to do so by the board. If a

1 firm contracts with a manufacturer to distribute samples of the
2 manufacturer's products, that firm is deemed to be the person engaged
3 in the business of sampling.

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

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

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

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

18 **Sec. 5.** RCW 70.155.100 and 1998 c 133 s 3 are each amended to read
19 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,
24 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070,
25 or 70.155.090.

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 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, a monetary
26 penalty in the amount of three hundred dollars for each violation;

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

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

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

37 (a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for
38 the first violation and one hundred dollars for each subsequent
39 violation;

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

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

5 (d) For violations of RCW 70.155.050 and 70.155.060, three hundred
6 dollars for each violation;

7 (e) For violations of RCW 70.155.070, one thousand dollars for each
8 violation.

9 (5) The liquor control board may impose sanctions against a person
10 licensed under RCW 82.24.510(1)(b) or 82.24.530 for violations of rules
11 under this chapter and for which a statutory penalty is not prescribed.

12 (6) 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)~~) (7) The liquor control board may issue a cease and desist
16 order to any person who is found by the liquor control board to have
17 violated or intending to violate the provisions of this chapter, RCW
18 26.28.080 or 82.24.500, requiring such person to cease specified
19 conduct that is in violation. The issuance of a cease and desist order
20 shall not preclude the imposition of other sanctions authorized by this
21 statute or any other provision of law.

22 (~~(7)~~) (8) The liquor control board may seek injunctive relief to
23 enforce the provisions of RCW 26.28.080 or 82.24.500 or this chapter.
24 The 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)~~) (9) All proceedings under subsections (1) through (~~(6)~~)
31 (5) and (7) of this section shall be conducted in accordance with
32 chapter 34.05 RCW.

33 (~~(9)~~) (10) The liquor control board may reduce or waive either
34 the penalties or the suspension or revocation of a license, or both, as
35 set forth in this chapter where the elements of proof are inadequate or
36 where there are mitigating circumstances. Mitigating circumstances may
37 include, but are not limited to, an exercise of due diligence by a
38 retailer. Further, the board may exceed penalties set forth in this
39 chapter based on aggravating circumstances.

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

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

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

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

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

27 (5) The liquor control board may adopt rules necessary to implement
28 this chapter and RCW 26.28.080 relating to the enforcement of
29 provisions regarding distribution of tobacco products, especially
30 relating to minors.

31 (6) No person may knowingly or willfully resist or oppose a state,
32 county, or municipal peace officer, or liquor enforcement officer, in
33 the discharge of his or her duties under this chapter, or aid and abet
34 the resistance or opposition. A violation of this subsection is a
35 misdemeanor.

36 **Sec. 7.** RCW 82.24.110 and 1999 c 193 s 2 are each amended to read
37 as follows:

1 (1) Each of the following acts is a gross misdemeanor and
2 punishable as such:

3 (a) To sell, except as a licensed wholesaler engaged in interstate
4 commerce as to the article being taxed herein, without the stamp first
5 being affixed;

6 (b) To sell in Washington as a wholesaler to a retailer who does
7 not possess and is required to possess a current cigarette retailer's
8 license;

9 (c) To use or have in possession knowingly or intentionally any
10 forged or counterfeit stamps;

11 (d) For any person other than the department of revenue or its duly
12 authorized agent to sell any stamps not affixed to any of the articles
13 taxed herein whether such stamps are genuine or counterfeit;

14 (e) To violate any of the provisions of this chapter;

15 (f) To violate any lawful rule made and published by the department
16 of revenue or the board;

17 (g) To use any stamps more than once;

18 (h) To refuse to allow the department of revenue or its duly
19 authorized agent, on demand, to make full inspection of any place of
20 business where any of the articles herein taxed are sold or otherwise
21 hinder or prevent such inspection;

22 (i) Except as provided in this chapter, for any retailer to have in
23 possession in any place of business any of the articles herein taxed,
24 unless the same have the proper stamps attached;

25 (j) For any person to make, use, or present or exhibit to the
26 department of revenue or its duly authorized agent, any invoice for any
27 of the articles herein taxed which bears an untrue date or falsely
28 states the nature or quantity of the goods therein invoiced;

29 (k) For any wholesaler or retailer or his or her agents or
30 employees to fail to produce on demand of the department of revenue all
31 invoices of all the articles herein taxed or stamps bought by him or
32 her or received in his or her place of business within five years prior
33 to such demand unless he or she can show by satisfactory proof that the
34 nonproduction of the invoices was due to causes beyond his or her
35 control;

36 (l) For any person to receive in this state any shipment of any of
37 the articles taxed herein, when the same are not stamped, for the
38 purpose of avoiding payment of tax. It is presumed that persons other

1 than dealers who purchase or receive shipments of unstamped cigarettes
2 do so to avoid payment of the tax imposed herein;

3 (m) For any person to possess or transport in this state a quantity
4 of (~~sixty~~) thirty thousand cigarettes or less unless the proper
5 stamps required by this chapter have been affixed or unless: (i)
6 Notice of the possession or transportation has been given as required
7 by RCW 82.24.250; (ii) the person transporting the cigarettes has in
8 actual possession invoices or delivery tickets which show the true name
9 and address of the consignor or seller, the true name and address of
10 the consignee or purchaser, and the quantity and brands of the
11 cigarettes so transported; and (iii) the cigarettes are consigned to or
12 purchased by any person in this state who is authorized by this chapter
13 to possess unstamped cigarettes in this state;

14 (n) To possess, sell, or transport within this state any container
15 or package of cigarettes that does not comply with this chapter.

16 (2) It is unlawful for any person knowingly or intentionally to
17 possess or to transport in this state a quantity in excess of (~~sixty~~)
18 thirty thousand cigarettes unless the proper stamps required by this
19 chapter are affixed thereto or unless: (a) Proper notice as required
20 by RCW 82.24.250 has been given; (b) the person transporting the
21 cigarettes actually possesses invoices or delivery tickets showing the
22 true name and address of the consignor or seller, the true name and
23 address of the consignee or purchaser, and the quantity and brands of
24 the cigarettes so transported; and (c) the cigarettes are consigned to
25 or purchased by a person in this state who is authorized by this
26 chapter to possess unstamped cigarettes in this state. Violation of
27 this section shall be punished as a class C felony under Title 9A RCW.

28 (3) All agents, employees, and others who aid, abet, or otherwise
29 participate in any way in the violation of the provisions of this
30 chapter or in any of the offenses described in this chapter shall be
31 guilty and punishable as principals, to the same extent as any
32 wholesaler or retailer or any other person violating this chapter.

33 **Sec. 8.** RCW 82.24.130 and 1999 c 193 s 3 are each amended to read
34 as follows:

35 (1) The following are subject to seizure and forfeiture:

36 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
37 that are found at any point within this state, which articles are held,
38 owned, or possessed by any person, and that do not have the stamps

1 affixed to the packages or containers; and any container or package of
2 cigarettes possessed or held for sale that does not comply with this
3 chapter.

4 (b) All conveyances, including aircraft, vehicles, or vessels,
5 which are used, or intended for use, to transport, or in any manner to
6 facilitate the transportation, for the purpose of sale or receipt of
7 property described in (a) of this subsection, except:

8 (i) A conveyance used by any person as a common or contract carrier
9 having in actual possession invoices or delivery tickets showing the
10 true name and address of the consignor or seller, the true name of the
11 consignee or purchaser, and the quantity and brands of the cigarettes
12 transported, unless it appears that the owner or other person in charge
13 of the conveyance is a consenting party or privy to a violation of this
14 chapter;

15 (ii) A conveyance subject to forfeiture under this section by
16 reason of any act or omission of which the owner thereof establishes to
17 have been committed or omitted without his or her knowledge or consent;

18 (iii) A conveyance encumbered by a bona fide security interest if
19 the secured party neither had knowledge of nor consented to the act or
20 omission.

21 (c) Any vending machine used for the purpose of violating the
22 provisions of this chapter.

23 (2) Property subject to forfeiture under this chapter may be seized
24 by any agent of the department authorized to collect taxes, any
25 enforcement officer of the board, or law enforcement officer of this
26 state upon process issued by any superior court or district court
27 having jurisdiction over the property. Seizure without process may be
28 made if:

29 (a) The seizure is incident to an arrest or a search under a search
30 warrant or an inspection under an administrative inspection warrant; or

31 (b) The department, the board, or the law enforcement officer has
32 probable cause to believe that the property was used or is intended to
33 be used in violation of this chapter and exigent circumstances exist
34 making procurement of a search warrant impracticable.

35 (3) Notwithstanding the foregoing provisions of this section,
36 articles taxed in this chapter which are in the possession of a
37 wholesaler or retailer, licensed under Washington state law, for a
38 period of time necessary to affix the stamps after receipt of the
39 articles, shall not be considered contraband.

1 (4) The director of the department of licensing may suspend for six
2 months the driver's license of a person found to be operating a
3 conveyance transporting property subject to forfeiture under this
4 chapter.

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

7 No tobacco manufacturer, wholesaler, or agent thereof, may pay the
8 monetary penalty of a tobacco retailer licensed under Title 82 RCW, nor
9 may a tobacco retailer licensed under Title 82 RCW accept money for
10 payment of a monetary penalty from a tobacco manufacturer, wholesaler,
11 or agent thereof. A violation of this section is a gross misdemeanor
12 punishable by a minimum fine of two thousand five hundred dollars for
13 the first offense and five thousand dollars for each offense
14 thereafter.

15 NEW SECTION. Sec. 10. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

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