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ENGROSSED SENATE BILL 5881

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State of Washington

56th Legislature

1999 Regular Session

By Senators Thibaudeau, Oke, Costa and Winsley; by request of Governor Locke and Attorney General

Read first time 02/15/1999. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to regulation of tobacco products under the access  
2 to minors statutes; amending RCW 70.155.010, 70.155.020, 70.155.030,  
3 70.155.040, 70.155.050, 70.155.100, 70.155.110, 70.155.130, 82.24.110,  
4 and 82.24.130; adding a new section to chapter 70.155 RCW; and  
5 prescribing penalties.

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

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

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

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

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

15 (3) "Package" or "container" means a package or container that  
16 holds twenty or more cigarettes.

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

1       (~~(4)~~) (5) "Sample" means a tobacco product distributed to members  
2 of the general public at no cost or at nominal cost for product  
3 promotion purposes.

4       (~~(5)~~) (6) "Sampler" means a person engaged in the business of  
5 sampling other than a retailer.

6       (~~(6)~~) (7) "Sampling" means the distribution of samples to members  
7 of the general public in a public place.

8       (~~(7)~~) (8) "Tobacco product" means a product that contains tobacco  
9 and is intended for human (~~(consumption)~~) use.

10       **Sec. 2.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to read  
11 as follows:

12       A person who holds a license issued under RCW (~~(82.24.520)~~)  
13 82.24.510(1)(b) or 82.24.530 shall:

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

16       (2) Display a sign concerning the prohibition of tobacco sales to  
17 minors.

18       Such sign shall:

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

21       (b) Be designed and produced by the department of health to read:  
22 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY  
23 PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED  
24 FOR PURCHASING OR POSSESSING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and

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

26       **Sec. 3.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to read  
27 as follows:

28       (1) No person shall sell or permit to be sold any tobacco product  
29 through any device that mechanically dispenses tobacco products unless  
30 the device is located fully within premises from which minors are  
31 prohibited or in industrial worksites where minors are not employed and  
32 not less than ten feet from all entrance or exit ways to and from each  
33 premise. The board shall adopt rules that allow an exception to the  
34 requirement that a device be located not less than ten feet from all  
35 entrance or exit ways to and from a premise if it is architecturally  
36 impractical for the device to be located not less than ten feet from  
37 all entrance and exit ways.

1       (2) Except as provided in subsection (1) of this section, beginning  
2 July 1, 2000, self-service displays of tobacco products are prohibited.  
3 All in-store tobacco products must be sold from behind the counter or  
4 from within locked display units. This section does not apply to  
5 retailers who sell tobacco products exclusively. Further, this section  
6 does not apply to sales from within premises where minors are  
7 prohibited by statute.

8       **Sec. 4.** RCW 70.155.040 and 1993 c 507 s 5 are each amended to read  
9 as follows:

10       (1) No person shall sell or permit to be sold ((cigarettes not)) a  
11 package or container of fewer than twenty cigarettes. All cigarettes  
12 must be sold in ((the)) original unopened packages or containers to  
13 which the stamps required by RCW 82.24.060 have been affixed.

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

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

19       (1) No person may engage in the business of sampling tobacco  
20 products within the state unless licensed to do so by the board. If a  
21 firm contracts with a manufacturer to distribute samples of the  
22 manufacturer's products, that firm is deemed to be the person engaged  
23 in the business of sampling.

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

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

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

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

1       **Sec. 6.** RCW 70.155.100 and 1998 c 133 s 3 are each amended to read  
2 as follows:

3       (1) The liquor control board may suspend or revoke a retailer's  
4 license held by a business at any location, or may impose a monetary  
5 penalty as set forth in subsection (2) of this section, if the liquor  
6 control board finds that the licensee has violated RCW 26.28.080,  
7 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070,  
8 or 70.155.090.

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

13       (a) For violation of RCW 26.28.080 or 70.155.020:

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

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

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

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

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

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

30       (c) For violations of RCW 70.155.040 occurring on the licensed  
31 premises:

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

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

36       (iii) A monetary penalty of one thousand dollars and suspension of  
37 the license for a period of six months for the third violation within  
38 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 (d) For violations of RCW 70.155.050 and 70.155.060, a monetary  
8 penalty in the amount of three hundred dollars for each violation;

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

11 (3) The liquor control board may impose a monetary penalty upon any  
12 person other than a licensed cigarette retailer or licensed sampler if  
13 the liquor control board finds that the person has violated RCW  
14 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060,  
15 70.155.070, or 70.155.090.

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

19 (a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for  
20 the first violation and one hundred dollars for each subsequent  
21 violation;

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

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

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

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

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

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

36 ((+6+)) (7) The liquor control board may issue a cease and desist  
37 order to any person who is found by the liquor control board to have  
38 violated or intending to violate the provisions of this chapter, RCW  
39 26.28.080 or 82.24.500, requiring such person to cease specified

1 conduct that is in violation. The issuance of a cease and desist order  
2 shall not preclude the imposition of other sanctions authorized by this  
3 statute or any other provision of law.

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

12 ~~((+8))~~ (9) All proceedings under subsections (1) through ~~((+6))~~  
13 (5) and (7) of this section shall be conducted in accordance with  
14 chapter 34.05 RCW.

15 ~~((+9))~~ (10) The liquor control board may reduce or waive either  
16 the penalties or the suspension or revocation of a license, or both, as  
17 set forth in this chapter where the elements of proof are inadequate or  
18 where there are mitigating circumstances. Mitigating circumstances may  
19 include, but are not limited to, an exercise of due diligence by a  
20 retailer. Further, the board may exceed penalties set forth in this  
21 chapter based on aggravating circumstances.

22 **Sec. 7.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
23 read as follows:

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

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

34 (3) For the purpose of enforcing the provisions of this chapter and  
35 RCW 26.28.080~~((+4))~~ and 82.24.500, a peace officer or enforcement  
36 officer of the liquor control board who has reasonable grounds to  
37 believe a person observed by the officer purchasing, attempting to  
38 purchase, or in possession of tobacco products is under the age of

1 eighteen years of age, may detain such person for a reasonable period  
2 of time and in such a reasonable manner as is necessary to determine  
3 the person's true identity and date of birth. Further, tobacco  
4 products possessed by persons under the age of eighteen years of age  
5 are considered contraband and may be seized by a peace officer or  
6 enforcement officer of the liquor control board.

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

10 (5) The liquor control board is authorized under chapter ..., Laws  
11 of 1999 (this act) to adopt rules necessary to implement this chapter  
12 and RCW 26.28.080 relating to the enforcement of provisions regarding  
13 distribution of tobacco products, especially relating to minors.

14 (6) No person may knowingly or willfully resist or oppose any  
15 state, county, or municipal peace officer, or liquor enforcement  
16 officer, in the discharge of his or her duties under this chapter, or  
17 aid and abet such resistance or opposition. A violation of this  
18 subsection is a misdemeanor.

19 **Sec. 8.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to  
20 read as follows:

21 This chapter preempts political subdivisions from adopting or  
22 enforcing requirements for the licensure and regulation of tobacco  
23 product promotions and sales within retail stores, except that  
24 political subdivisions that have adopted ordinances (~~prohibiting~~  
25 ~~sampling~~) regulating tobacco by January 1, 1993, may continue to  
26 enforce these ordinances. No political subdivision may: (1) Impose  
27 fees or license requirements on retail businesses for possessing or  
28 selling cigarettes or tobacco products, other than general business  
29 taxes or license fees not primarily levied on tobacco products; or (2)  
30 regulate or prohibit activities covered by RCW 70.155.020 through  
31 70.155.080. (~~This chapter does not otherwise preempt political~~  
32 ~~subdivisions from adopting ordinances regulating the sale, purchase,~~  
33 ~~use, or promotion of tobacco products not inconsistent with chapter~~  
34 ~~507, Laws of 1993.)) Nothing in this chapter limits the powers of a  
35 political subdivision from adopting ordinances regulating the sale,  
36 purchase, use, or promotion of tobacco products, not inconsistent with  
37 this chapter, occurring outside a retail store. Tobacco advertising  
38 and promotions within a retail store that are conspicuous to the view~~

1 of the public from outside the retail store are considered to be  
2 occurring outside the retail store.

3 **Sec. 9.** RCW 82.24.110 and 1997 c 420 s 4 are each amended to read  
4 as follows:

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

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

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

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

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

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

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

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

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

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

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

33 (k) For any wholesaler or retailer or his or her agents or  
34 employees to fail to produce on demand of the department of revenue all  
35 invoices of all the articles herein taxed or stamps bought by him or  
36 her or received in his or her place of business within five years prior  
37 to such demand unless he or she can show by satisfactory proof that the



1 nonproduction of the invoices was due to causes beyond his or her  
2 control;

3 (l) For any person to receive in this state any shipment of any of  
4 the articles taxed herein, when the same are not stamped, for the  
5 purpose of avoiding payment of tax. It is presumed that persons other  
6 than dealers who purchase or receive shipments of unstamped cigarettes  
7 do so to avoid payment of the tax imposed herein;

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

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

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

36 **Sec. 10.** RCW 82.24.130 and 1997 c 420 s 5 are each amended to read  
37 as follows:

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

1 (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
2 that are found at any point within this state, which articles are held,  
3 owned, or possessed by any person, and that do not have the stamps  
4 affixed to the packages or containers.

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

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

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

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

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

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

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

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

36 (3) Notwithstanding the foregoing provisions of this section,  
37 articles taxed in this chapter which are in the possession of a  
38 wholesaler or retailer, licensed under Washington state law, for a

1 period of time necessary to affix the stamps after receipt of the  
2 articles, shall not be considered contraband.

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

7 NEW SECTION. Sec. 11. A new section is added to chapter 70.155  
8 RCW to read as follows:

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

17 NEW SECTION. Sec. 12. If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

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