
HOUSE BILL 2125

State of Washington 58th Legislature 2003 Regular Session

By Representatives McIntire and Edwards

Read first time 02/26/2003. Referred to Committee on Health Care.

1 AN ACT Relating to minors' access to shipments and sales of tobacco
2 products; amending RCW 70.155.010, 70.155.030, and 70.155.040; adding
3 new sections to chapter 70.155 RCW; and prescribing penalties.

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

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

7 The definitions set forth in RCW 82.24.010 shall apply to RCW
8 70.155.020 through 70.155.130. In addition, for the purposes of this
9 chapter, unless otherwise required by the context:

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

11 (2) "Delivery sale" means any sale of a tobacco product to a
12 consumer in Washington where either:

13 (a) The purchaser submits the order for a sale by means of a
14 telephonic or other method of voice transmission, the mail or any other
15 delivery service, or the internet or other on-line service; or

16 (b) The tobacco products are delivered by use of the mail or other
17 delivery service.

18 Any sale of tobacco products to an individual in Washington shall

1 be treated as a delivery sale unless the individual is licensed as a
2 wholesaler or retailer of tobacco products by the department of
3 revenue.

4 (3) "Delivery service" means any person that is engaged in the
5 commercial delivery of letters, packages, or other containers.

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

8 ~~((+3))~~ (5) "Public place" means a public street, sidewalk, or
9 park, or any area open to the public in a publicly owned and operated
10 building.

11 ~~((+4))~~ (6) "Sample" means a tobacco product distributed to members
12 of the general public at no cost or at nominal cost for product
13 promotion purposes.

14 ~~((+5))~~ (7) "Sampler" means a person engaged in the business of
15 sampling other than a retailer.

16 ~~((+6))~~ (8) "Sampling" means the distribution of samples to members
17 of the general public in a public place.

18 ~~((+7))~~ (9) "Shipping container" means a container in which tobacco
19 products are shipped in connection with a delivery sale.

20 (10) "Shipping documents" means bills of lading, air bills, postal
21 service forms, or any other documents used to evidence the undertaking
22 by a delivery service to deliver letters, packages, or other
23 containers.

24 (11) "Tobacco product" means a product that contains tobacco and is
25 intended for human consumption.

26 NEW SECTION. Sec. 2. (1) No person shall make a delivery sale of
27 tobacco products to any individual who is a minor.

28 (2) Each person taking a delivery sale order shall comply with:

29 (a) The age verification requirements set forth in section 3 of
30 this act;

31 (b) The disclosure requirements set forth in section 4 of this act;
32 and

33 (c) The shipping requirements set forth in section 5 of this act.

34 NEW SECTION. Sec. 3. (1) No person shall mail or ship tobacco
35 products in connection with a delivery sale order unless before mailing

1 or shipping the tobacco products the person accepting the delivery sale
2 order first:

3 (a) Obtains from the prospective customer a certification which
4 includes:

- 5 (i) Reliable confirmation that the purchaser is not a minor; and
- 6 (ii) A statement signed by the prospective purchaser in writing
7 and under penalty of perjury which:

8 (A) Certifies the prospective purchaser's address and date of
9 birth; and

10 (B) Confirms that the prospective purchaser understands that
11 signing another person's name to the certification is illegal, and that
12 sales of tobacco products to minors is illegal, and that the purchase
13 of tobacco products by minors is illegal under the laws of Washington;

14 (b) Makes a good faith effort to verify the information contained
15 in the certification provided by the prospective purchaser pursuant to
16 (a) of this subsection against a federal data base established for this
17 purpose if one exists, or against a commercially available data base;

18 (c) Sends to the prospective purchaser, via electronic mail or
19 other means, a notice which meets the requirements of section 4 of this
20 act and requests confirmation that the delivery sale order was placed
21 by the prospective purchaser;

22 (d) Receives from the prospective purchaser confirmation, pursuant
23 to the request described in (c) of this subsection, that the individual
24 placed the delivery sale order; and

25 (e) Receives payment for the delivery sale from the prospective
26 purchaser by a credit or debit card that has been issued in the
27 purchaser's name.

28 (2) Persons taking delivery sale orders may request that
29 prospective purchasers provide their electronic mail addresses.

30 NEW SECTION. **Sec. 4.** The notice required under section 3(1)(c) of
31 this act shall include:

32 (1) A prominent and clearly legible statement that tobacco sales to
33 minors are illegal;

34 (2) A prominent and clearly legible statement that consists of one
35 of the warnings set forth in section 4(a)(1) of the federal cigarette
36 labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a
37 quarterly basis; and

1 (3) A prominent and clearly legible statement that sales of tobacco
2 products are restricted to those individuals who provide verifiable
3 proof of age in accordance with section 3 of this act.

4 NEW SECTION. **Sec. 5.** (1) Each person who mails or ships tobacco
5 products in connection with a delivery sale order:

6 (a) Shall include as part of the shipping documents a clear and
7 conspicuous statement providing as follows: "TOBACCO PRODUCTS:
8 WASHINGTON LAW PROHIBITS SHIPPING TO MINORS AND REQUIRES THE PAYMENT OF
9 ALL APPLICABLE TAXES";

10 (b) Shall use a method of mailing or shipping that obligates the
11 delivery service to require:

12 (i) The purchaser placing the delivery sale order, or an adult
13 designated by the customer, to sign to accept delivery of the shipping
14 container; and

15 (ii) Proof, in the form of a valid, government-issued
16 identification of a type listed in RCW 70.155.090(1) bearing a
17 photograph of the individual who signs to accept delivery of the
18 shipping container, demonstrating that:

19 (A) The individual is either the addressee or the adult designated
20 by the addressee; and

21 (B) The individual is not a minor.

22 (2) A delivery service shall be in violation of this section if it
23 ships or delivers tobacco products in connection with a delivery sale
24 if it fails to comply with the requirements described in subsection
25 (1)(b) of this section:

26 (a) When obligated to do so under a method of shipping;

27 (b) When delivering any container pursuant to shipping documents
28 containing the statement described in subsection (1)(a) of this
29 section; or

30 (c) When delivering any container that the delivery service
31 otherwise has reason to know contains tobacco products.

32 (3) If the person taking a delivery sale order delivers the tobacco
33 products without using a third-party delivery service, the person shall
34 comply with all requirements of this section applicable to a delivery
35 service and shall be in violation of this section if it fails to comply
36 with any requirement.

1 NEW SECTION. **Sec. 6.** (1)(a) Except as otherwise provided in this
2 section, the first time a person violates any provision of sections 2
3 through 5 of this act, the person shall be fined one thousand dollars
4 or five times the retail value of the tobacco products involved,
5 whichever is greater.

6 (b) In the case of a second or subsequent violation, the person
7 shall be fined five thousand dollars or five times the retail value of
8 the tobacco products involved, whichever is greater.

9 (2) Any person who knowingly violates any provision of sections 2
10 through 5 of this act, or who knowingly and falsely submits a
11 certification under section 3(1)(a) of this act in another person's
12 name, shall, for each offense, be fined ten thousand dollars or five
13 times the retail value of the tobacco products involved, whichever is
14 greater, or imprisoned not more than five years, or both the fine and
15 imprisonment.

16 (3) Any tobacco products sold or attempted to be sold in a delivery
17 sale that does not meet the requirements of sections 2 through 5 of
18 this act shall be forfeited to the state and destroyed.

19 **Sec. 7.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to read
20 as follows:

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

31 (2) Except as provided in subsection (1) of this section, beginning
32 January 1, 2003, self-service displays of tobacco products are
33 prohibited. All in-store tobacco products must be sold from behind the
34 counter or from within locked display units, or from any other location
35 that a customer does not have access to without the assistance of the
36 retailer. This subsection (2) does not apply to retailers who sell
37 tobacco products exclusively or primarily. For the purposes of this

1 subsection (2), the liquor control board has discretion to determine
2 whether a retailer sells tobacco products exclusively or primarily.
3 Further, this subsection (2) does not apply to sales from within
4 premises where minors are prohibited by statute.

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

7 (1) No person shall sell or permit to be sold cigarettes not in the
8 original unopened package or container to which the stamps required by
9 RCW 82.24.060 have been affixed.

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

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

15 NEW SECTION. **Sec. 9.** Sections 2 through 6 of this act are each
16 added to chapter 70.155 RCW.

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