

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2027

58th Legislature
2003 Regular Session

Passed by the House April 21, 2003
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 10, 2003
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2027** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2027

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Technology, Telecommunications & Energy
(originally sponsored by Representatives Kirby, Delvin, Morris,
DeBolt and Sullivan)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to seizing, shipping, and delivery of cigarettes
2 through internet, telephonic, or other delivery services; amending RCW
3 70.155.010 and 82.24.130; reenacting and amending RCW 9A.82.010; adding
4 a 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 70.155.010 and 1993 c 507 s 2 are each amended to read
7 as follows:

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

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

12 (2) "Delivery sale" means any sale of cigarettes to a consumer in
13 the state where either: (a) The purchaser submits an order for a sale
14 by means of a telephonic or other method of voice transmission, mail
15 delivery, any other delivery service, or the internet or other online
16 service; or (b) the cigarettes are delivered by use of mail delivery or
17 any other delivery service. A sale of cigarettes shall be a delivery
18 sale regardless of whether the seller is located within or without the

1 state. A sale of cigarettes not for personal consumption to a person
2 who is a wholesaler licensed pursuant to chapter 82.24 RCW or a
3 retailer pursuant to chapter 82.24 RCW is not a delivery sale.

4 (3) "Delivery service" means any private carrier engaged in the
5 commercial delivery of letters, packages, or other containers that
6 requires the recipient of that letter, package, or container to sign to
7 accept delivery.

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

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

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

16 ~~((5))~~ (7) "Sampler" means a person engaged in the business of
17 sampling other than a retailer.

18 ~~((6))~~ (8) "Sampling" means the distribution of samples to members
19 of the general public in a public place.

20 ~~((7))~~ (9) "Shipping container" means a container in which
21 cigarettes are shipped in connection with a delivery sale.

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

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

27 NEW SECTION. Sec. 2. A new section is added to chapter 70.155 RCW
28 to read as follows:

29 (1) It is unlawful for a person who mails, ships, or otherwise
30 delivers cigarettes to fail to:

31 (a) Verify the age of the receiver of the cigarettes upon delivery;
32 and

33 (b) Obtain in writing, before the first delivery sale of
34 cigarettes, verification of the receiver's address and that the
35 receiver of the cigarettes is not a minor. The statement must also
36 confirm that the purchaser understands: (i) That signing another
37 person's name to the certification is a violation of RCW

1 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a
2 violation of RCW 26.28.080; (iii) that the purchase of cigarettes by
3 minors is a violation of RCW 70.155.080; and (iv) that he or she has
4 the option to receive mailings from a tobacco company about tobacco
5 products.

6 (2) It is unlawful for a person to mail, ship, or otherwise deliver
7 cigarettes in connection with a delivery sale unless before the first
8 delivery sale to the consumer that person:

9 (a) Either verifies the information contained in the certification
10 provided by the prospective consumer in subsection (1) of this section
11 against a commercially available data base, or obtains a photocopy of
12 an officially issued identification containing the bearer's age,
13 signature, and photograph. The only forms of identification that are
14 acceptable as proof of age for the purchase for tobacco products are:

15 (i) A liquor control authority card of identification issued by a state
16 of the United States or a province of Canada, (ii) a driver's license,
17 instruction permit, or identification card issued by a state of the
18 United States or a province of Canada, (iii) a United States military
19 identification card, (iv) a passport, or (v) a merchant marine
20 identification card issued by the United States coast guard;

21 (b) Provides to the prospective consumer through electronic mail or
22 other means a notice that meets the requirements of subsection (3) of
23 this section; and

24 (c) In the case of an order for cigarettes pursuant to an
25 advertisement on the internet, receives payment for the delivery sale
26 from the prospective consumer by a credit card or debit card, or by
27 check that has been issued in the prospective consumer's name.

28 (3) The notice required under subsection (2)(b) of this section
29 must include:

30 (a) A prominent and clearly legible statement that cigarette sales
31 to minors are illegal;

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

36 (c) A prominent and clearly legible statement that sales of
37 cigarettes are restricted to those consumers who provide verifiable
38 proof of age in accordance with subsection (1) of this section; and

1 (d) A prominent and clearly legible statement that cigarette sales
2 are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an
3 explanation of how the tax has been or is to be paid with respect to a
4 delivery sale.

5 (4) It is unlawful for a person who mails, ships, or otherwise
6 delivers cigarettes in connection with a delivery sale to fail to:

7 (a) Include as part of the bill of lading, or other shipping
8 documents, a clear and conspicuous statement that states: "Cigarettes:
9 Washington Law Prohibits Shipping to Individuals Under 18, and Requires
10 the Payment of all Applicable Taxes";

11 (b) Contract only with private carriers who employ delivery agents
12 who will verify the receiver of the cigarettes is not a minor upon
13 delivery. The only forms of identification that are acceptable as
14 proof of age for the purchase for tobacco products are: (i) A liquor
15 control authority card of identification issued by a state of the
16 United States or a province of Canada, (ii) a driver's license,
17 instruction permit, or identification card issued by a state of the
18 United States or a province of Canada, (iii) a United States military
19 identification card, (iv) a passport, or (v) a merchant marine
20 identification card issued by the United States coast guard;

21 (c) Provide to the delivery service retained for the delivery sale
22 evidence of full compliance with this section.

23 (5)(a) Before making delivery sales or mailings, shipping, or
24 otherwise delivering cigarettes to a Washington address in connection
25 with any sales, any person who mails, ships, or otherwise delivers
26 cigarettes shall file with the board a statement setting forth the
27 person's name, trade name, and the address of the person's principal
28 place of business and any other place of business.

29 (b) Any person who mails, ships, or otherwise delivers cigarettes
30 in connection with a delivery sale shall within fifteen days after the
31 first of each month file with the board a report of all delivery sales
32 made by the person within this state for the preceding month. The
33 report shall show the name and address of the consumer to whom the
34 cigarettes were sold, the kind and quality, and the date of delivery
35 thereof.

36 (6)(a) Any person other than a delivery service who violates any of
37 the provisions of this section is guilty of a class C felony punishable

1 by up to five years in prison and a fine of ten thousand dollars, and
2 payment of the cost of investigation and prosecution, including
3 attorneys' fees.

4 (b) Any person other than a delivery service who commits a second
5 or subsequent violation of this section is a class B felony punishable
6 by up to ten years in prison and a fine of twenty thousand dollars, and
7 payment of the cost of investigation and prosecution, including
8 attorneys' fees.

9 (c) Any delivery service that violates any provision of this
10 section shall be guilty of a gross misdemeanor punishable by up to one
11 year in jail and a fine of five thousand dollars.

12 (7) Any person that fails to collect or remit to the department of
13 revenue any tax required under chapter 82.24 RCW in connection with a
14 delivery sale shall be assessed, in addition to any other penalty, a
15 penalty of five times the retail value of the cigarettes involved.

16 (8) For the purpose of obtaining information concerning any matter
17 relating to the administration or enforcement of this title, the board
18 or any of its agents may inspect the books, documents, and records of
19 any person who makes delivery sales or mailings, or ships or otherwise
20 delivers cigarettes or retains another person to make delivery sales or
21 mailings, or to ship or otherwise deliver cigarettes insofar as such
22 books, documents, and/or records pertain to the financial transaction
23 involved. If such a person neglects or refuses to produce and submit
24 for inspection any book, record, or document as required by this
25 section when requested to do so by the board or its agent, then the
26 board or the attorney general may seek an order in superior court
27 compelling such production of books, records, or documents.

28 **Sec. 3.** RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are
29 each reenacted and amended to read as follows:

30 Unless the context requires the contrary, the definitions in this
31 section apply throughout this chapter.

32 (1)(a) "Beneficial interest" means:

33 (i) The interest of a person as a beneficiary under a trust
34 established under Title 11 RCW in which the trustee for the trust holds
35 legal or record title to real property;

36 (ii) The interest of a person as a beneficiary under any other

1 trust arrangement under which a trustee holds legal or record title to
2 real property for the benefit of the beneficiary; or

3 (iii) The interest of a person under any other form of express
4 fiduciary arrangement under which one person holds legal or record
5 title to real property for the benefit of the other person.

6 (b) "Beneficial interest" does not include the interest of a
7 stockholder in a corporation or the interest of a partner in a general
8 partnership or limited partnership.

9 (c) A beneficial interest is considered to be located where the
10 real property owned by the trustee is located.

11 (2) "Control" means the possession of a sufficient interest to
12 permit substantial direction over the affairs of an enterprise.

13 (3) "Creditor" means a person making an extension of credit or a
14 person claiming by, under, or through a person making an extension of
15 credit.

16 (4) "Criminal profiteering" means any act, including any
17 anticipatory or completed offense, committed for financial gain, that
18 is chargeable or indictable under the laws of the state in which the
19 act occurred and, if the act occurred in a state other than this state,
20 would be chargeable or indictable under the laws of this state had the
21 act occurred in this state and punishable as a felony and by
22 imprisonment for more than one year, regardless of whether the act is
23 charged or indicted, as any of the following:

24 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

25 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

26 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

27 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

28 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
29 9A.56.080;

30 (f) Unlawful sale of subscription television services, as defined
31 in RCW 9A.56.230;

32 (g) Theft of telecommunication services or unlawful manufacture of
33 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

34 (h) Child selling or child buying, as defined in RCW 9A.64.030;

35 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
36 9A.68.050;

37 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

38 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

1 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
2 (m) Advancing money for use in an extortionate extension of credit,
3 as defined in RCW 9A.82.030;
4 (n) Collection of an extortionate extension of credit, as defined
5 in RCW 9A.82.040;
6 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
7 (p) Delivery or manufacture of controlled substances or possession
8 with intent to deliver or manufacture controlled substances under
9 chapter 69.50 RCW;
10 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
11 (r) Leading organized crime, as defined in RCW 9A.82.060;
12 (s) Money laundering, as defined in RCW 9A.83.020;
13 (t) Obstructing criminal investigations or prosecutions in
14 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
15 9A.76.070, or 9A.76.180;
16 (u) Fraud in the purchase or sale of securities, as defined in RCW
17 21.20.010;
18 (v) Promoting pornography, as defined in RCW 9.68.140;
19 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,
20 9.68A.050, and 9.68A.060;
21 (x) Promoting prostitution, as defined in RCW 9A.88.070 and
22 9A.88.080;
23 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
24 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
25 (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
26 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
27 (cc) Commercial telephone solicitation in violation of RCW
28 19.158.040(1);
29 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
30 (ee) Unlawful practice of law, as defined in RCW 2.48.180;
31 (ff) Commercial bribery, as defined in RCW 9A.68.060;
32 (gg) Health care false claims, as defined in RCW 48.80.030;
33 (hh) Unlicensed practice of a profession or business, as defined in
34 RCW 18.130.190(7);
35 (ii) Improperly obtaining financial information, as defined in RCW
36 9.35.010; (~~oe~~)
37 (jj) Identity theft, as defined in RCW 9.35.020;

1 (kk) Unlawful shipment of cigarettes in violation of section 2(6)
2 (a) or (b) of this act; or

3 (ll) Unlawful shipment of cigarettes in violation of RCW
4 82.24.110(2).

5 (5) "Dealer in property" means a person who buys and sells property
6 as a business.

7 (6) "Debtor" means a person to whom an extension of credit is made
8 or a person who guarantees the repayment of an extension of credit or
9 in any manner undertakes to indemnify the creditor against loss
10 resulting from the failure of a person to whom an extension is made to
11 repay the same.

12 (7) "Documentary material" means any book, paper, document,
13 writing, drawing, graph, chart, photograph, phonograph record, magnetic
14 tape, computer printout, other data compilation from which information
15 can be obtained or from which information can be translated into usable
16 form, or other tangible item.

17 (8) "Enterprise" includes any individual, sole proprietorship,
18 partnership, corporation, business trust, or other profit or nonprofit
19 legal entity, and includes any union, association, or group of
20 individuals associated in fact although not a legal entity, and both
21 illicit and licit enterprises and governmental and nongovernmental
22 entities.

23 (9) "Extortionate extension of credit" means an extension of credit
24 with respect to which it is the understanding of the creditor and the
25 debtor at the time the extension is made that delay in making repayment
26 or failure to make repayment could result in the use of violence or
27 other criminal means to cause harm to the person, reputation, or
28 property of any person.

29 (10) "Extortionate means" means the use, or an express or implicit
30 threat of use, of violence or other criminal means to cause harm to the
31 person, reputation, or property of any person.

32 (11) "Financial institution" means any bank, trust company, savings
33 and loan association, savings bank, mutual savings bank, credit union,
34 or loan company under the jurisdiction of the state or an agency of the
35 United States.

36 (12) "Pattern of criminal profiteering activity" means engaging in
37 at least three acts of criminal profiteering, one of which occurred
38 after July 1, 1985, and the last of which occurred within five years,

1 excluding any period of imprisonment, after the commission of the
2 earliest act of criminal profiteering. In order to constitute a
3 pattern, the three acts must have the same or similar intent, results,
4 accomplices, principals, victims, or methods of commission, or be
5 otherwise interrelated by distinguishing characteristics including a
6 nexus to the same enterprise, and must not be isolated events.
7 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
8 any person other than the attorney general or county prosecuting
9 attorney in which one or more acts of fraud in the purchase or sale of
10 securities are asserted as acts of criminal profiteering activity, it
11 is a condition to civil liability under RCW 9A.82.100 that the
12 defendant has been convicted in a criminal proceeding of fraud in the
13 purchase or sale of securities under RCW 21.20.400 or under the laws of
14 another state or of the United States requiring the same elements of
15 proof, but such conviction need not relate to any act or acts asserted
16 as acts of criminal profiteering activity in such civil action under
17 RCW 9A.82.100.

18 (13) "Real property" means any real property or interest in real
19 property, including but not limited to a land sale contract, lease, or
20 mortgage of real property.

21 (14) "Records" means any book, paper, writing, record, computer
22 program, or other material.

23 (15) "Repayment of an extension of credit" means the repayment,
24 satisfaction, or discharge in whole or in part of a debt or claim,
25 acknowledged or disputed, valid or invalid, resulting from or in
26 connection with that extension of credit.

27 (16) "Stolen property" means property that has been obtained by
28 theft, robbery, or extortion.

29 (17) "To collect an extension of credit" means to induce in any way
30 a person to make repayment thereof.

31 (18) "To extend credit" means to make or renew a loan or to enter
32 into an agreement, tacit or express, whereby the repayment or
33 satisfaction of a debt or claim, whether acknowledged or disputed,
34 valid or invalid, and however arising, may or shall be deferred.

35 (19) "Traffic" means to sell, transfer, distribute, dispense, or
36 otherwise dispose of stolen property to another person, or to buy,
37 receive, possess, or obtain control of stolen property, with intent to

1 sell, transfer, distribute, dispense, or otherwise dispose of the
2 property to another person.

3 (20)(a) "Trustee" means:

4 (i) A person acting as a trustee under a trust established under
5 Title 11 RCW in which the trustee holds legal or record title to real
6 property;

7 (ii) A person who holds legal or record title to real property in
8 which another person has a beneficial interest; or

9 (iii) A successor trustee to a person who is a trustee under (a)(i)
10 or (ii) of this subsection.

11 (b) "Trustee" does not mean a person appointed or acting as:

12 (i) A personal representative under Title 11 RCW;

13 (ii) A trustee of any testamentary trust;

14 (iii) A trustee of any indenture of trust under which a bond is
15 issued; or

16 (iv) A trustee under a deed of trust.

17 (21) "Unlawful debt" means any money or other thing of value
18 constituting principal or interest of a debt that is legally
19 unenforceable in the state in full or in part because the debt was
20 incurred or contracted:

21 (a) In violation of any one of the following:

22 (i) Chapter 67.16 RCW relating to horse racing;

23 (ii) Chapter 9.46 RCW relating to gambling;

24 (b) In a gambling activity in violation of federal law; or

25 (c) In connection with the business of lending money or a thing of
26 value at a rate that is at least twice the permitted rate under the
27 applicable state or federal law relating to usury.

28 **Sec. 4.** RCW 82.24.130 and 1999 c 193 s 3 are each amended to read
29 as follows:

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

31 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
32 that are found at any point within this state, which articles are held,
33 owned, or possessed by any person, and that do not have the stamps
34 affixed to the packages or containers; and any container or package of
35 cigarettes possessed or held for sale that does not comply with this
36 chapter.

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

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

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

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

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

20 (d) All cigarettes sold, delivered, or attempted to be delivered in
21 violation of section 2 of this act.

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

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

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

34 (3) Notwithstanding the foregoing provisions of this section,
35 articles taxed in this chapter which are in the possession of a
36 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.

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