
SENATE BILL 5366

State of Washington

61st Legislature

2009 Regular Session

By Senators Holmquist, Kohl-Welles, and Shin; by request of Liquor Control Board

Read first time 01/21/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to licensing administration for cigarettes and
2 tobacco products; and amending RCW 82.24.510, 82.24.550, 82.26.150,
3 82.26.180, 82.26.190, 82.26.210, and 82.26.220.

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

5 **Sec. 1.** RCW 82.24.510 and 2001 c 235 s 8 are each amended to read
6 as follows:

7 (1) The licenses issuable under this chapter are as follows:

8 (a) A wholesaler's license.

9 (b) A retailer's license.

10 (2) Application for the licenses shall be made through the master
11 license system under chapter 19.02 RCW. The (~~department of revenue~~)
12 board shall adopt rules regarding the regulation of the licenses. The
13 (~~department of revenue~~) board may refrain from the issuance of any
14 license under this chapter if the (~~department~~) board has reasonable
15 cause to believe that the applicant has wilfully withheld information
16 requested for the purpose of determining the eligibility of the
17 applicant to receive a license, or if the (~~department~~) board has
18 reasonable cause to believe that information submitted in the
19 application is false or misleading or is not made in good faith. In

1 addition, for the purpose of reviewing an application for a
2 wholesaler's license or retailer's license and for considering the
3 denial, suspension, or revocation of any such license, the
4 ~~((department))~~ board may consider ~~((criminal convictions of the~~
5 ~~applicant related to the selling of cigarettes))~~ any prior criminal
6 conduct of the applicant, including an administrative violation history
7 record with the board and a criminal history record information check
8 within the previous five years, in any state, tribal, or federal
9 jurisdiction in the United States, its territories, or possessions, and
10 the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to
11 such cases. The ~~((department))~~ board may, in its discretion, grant or
12 refuse the wholesaler's license or retailer's license, subject to the
13 provisions of RCW 82.24.550.

14 (3) No person may qualify for a wholesaler's license or a
15 retailer's license under this section without first undergoing a
16 criminal background check. The background check shall be performed by
17 the ~~((liquor control))~~ board and must disclose any criminal
18 ~~((convictions related to the selling of cigarettes))~~ conduct within the
19 previous five years in any state, tribal, or federal jurisdiction in
20 the United States, its territories, or possessions. A person who
21 possesses a valid license on July 22, 2001, is subject to this
22 subsection and subsection (2) of this section beginning on the date of
23 the person's master license expiration, and thereafter. If the
24 applicant or licensee also has a license issued under chapter 66.24 or
25 82.26 RCW, the background check done under the authority of chapter
26 66.24 or 82.26 RCW satisfies the requirements of this section.

27 (4) Each such license shall expire on the master license expiration
28 date, and each such license shall be continued annually if the licensee
29 has paid the required fee and complied with all the provisions of this
30 chapter and the rules of the ~~((department of revenue))~~ board made
31 pursuant thereto.

32 (5) Each license and any other evidence of the license that the
33 board requires must be exhibited in each place of business for which it
34 is issued and in the manner required for the display of a master
35 license.

36 **Sec. 2.** RCW 82.24.550 and 2005 c 180 s 19 are each amended to read
37 as follows:

1 (1) The board shall enforce the provisions of this chapter. The
2 board may adopt, amend, and repeal rules necessary to enforce and
3 administer the provisions of this chapter.

4 (2) The department may adopt, amend, and repeal rules necessary to
5 administer the provisions of this chapter. The ((~~department has full~~
6 ~~power and authority to~~)) board may revoke or suspend the license or
7 permit of any wholesale or retail cigarette dealer in the state upon
8 sufficient cause appearing of the violation of this chapter or upon the
9 failure of such licensee to comply with any of the provisions of this
10 chapter.

11 (3) A license shall not be suspended or revoked except upon notice
12 to the licensee and after a hearing as prescribed by the ((~~department~~))
13 board. The ((~~department~~)) board, upon finding that the licensee has
14 failed to comply with any provision of this chapter or any rule adopted
15 under this chapter, shall, in the case of the first offense, suspend
16 the license or licenses of the licensee for a period of not less than
17 thirty consecutive business days, and, in the case of a second or
18 further offense, shall suspend the license or licenses for a period of
19 not less than ninety consecutive business days nor more than twelve
20 months, and, in the event the ((~~department~~)) board finds the licensee
21 has been guilty of willful and persistent violations, it may revoke the
22 license or licenses.

23 (4) Any licenses issued under chapter 82.26 RCW to a person whose
24 license or licenses have been suspended or revoked under this section
25 shall also be suspended or revoked during the period of suspension or
26 revocation under this section.

27 (5) Any person whose license or licenses have been revoked under
28 this section may ((~~apply~~)) reapply to the ((~~department~~)) board at the
29 expiration of one year ((~~for a reinstatement~~)) from the date of
30 revocation of the license or licenses. The license or licenses may be
31 ((~~reinstated~~)) approved by the ((~~department~~)) board if it appears to
32 the satisfaction of the ((~~department~~)) board that the licensee will
33 comply with the provisions of this chapter and the rules adopted under
34 this chapter.

35 (6) A person whose license has been suspended or revoked shall not
36 sell cigarettes or tobacco products or permit cigarettes or tobacco
37 products to be sold during the period of such suspension or revocation

1 on the premises occupied by the person or upon other premises
2 controlled by the person or others or in any other manner or form
3 whatever.

4 (7) Any determination and order by the ((department)) board, and
5 any order of suspension or revocation by the ((department)) board of
6 the license or licenses issued under this chapter, or refusal to
7 reinstate a license or licenses after revocation shall be reviewable by
8 an appeal to the superior court of Thurston county. The superior court
9 shall review the order or ruling of the ((department)) board and may
10 hear the matter de novo, having due regard to the provisions of this
11 chapter and the duties imposed upon ((the department and)) the board.

12 (8) If the board makes an initial decision to deny a license or
13 renewal, or suspend or revoke a license, the applicant may request a
14 hearing subject to the applicable provisions under Title 34 RCW.

15 (9) For purposes of this section, "tobacco products" has the same
16 meaning as in RCW 82.26.010.

17 **Sec. 3.** RCW 82.26.150 and 2005 c 180 s 11 are each amended to read
18 as follows:

19 (1) The licenses issuable by the ((department)) board under this
20 chapter are as follows:

- 21 (a) A distributor's license; and
- 22 (b) A retailer's license.

23 (2) Application for the licenses shall be made through the master
24 license system under chapter 19.02 RCW. The ((department)) board may
25 adopt rules regarding the regulation of the licenses. The
26 ((department)) board may refuse to issue any license under this chapter
27 if the ((department)) board has reasonable cause to believe that the
28 applicant has willfully withheld information requested for the purpose
29 of determining the eligibility of the applicant to receive a license,
30 or if the ((department)) board has reasonable cause to believe that
31 information submitted in the application is false or misleading or is
32 not made in good faith. In addition, for the purpose of reviewing an
33 application for a distributor's license or retailer's license and for
34 considering the denial, suspension, or revocation of any such license,
35 the ((department)) board may consider criminal ((convictions)) conduct
36 of the applicant ((related to the selling of tobacco products)),
37 including an administrative violation history record with the board and

1 a criminal history record information check within the previous five
2 years, in any state, tribal, or federal jurisdiction in the United
3 States, its territories, or possessions, and the provisions of RCW
4 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The
5 ((department)) board may, in its discretion, issue or refuse to issue
6 the distributor's license or retailer's license, subject to the
7 provisions of RCW 82.26.220.

8 (3) No person may qualify for a distributor's license or a
9 retailer's license under this section without first undergoing a
10 criminal background check. The background check shall be performed by
11 the board and must disclose any criminal ((convictions related to the
12 selling of tobacco products)) conduct within the previous five years in
13 any state, tribal, or federal jurisdiction in the United States, its
14 territories, or possessions. If the applicant or licensee also has a
15 license issued under chapter 66.24 or 82.24 RCW, the background check
16 done under the authority of chapter 66.24 or 82.24 RCW satisfies the
17 requirements of this section.

18 (4) Each license issued under this chapter shall expire on the
19 master license expiration date. The license shall be continued
20 annually if the licensee has paid the required fee and complied with
21 all the provisions of this chapter and the rules of the ((department))
22 board adopted pursuant to this chapter.

23 (5) Each license and any other evidence of the license ((as the
24 department requires shall)) required under this chapter must be
25 exhibited in ((the)) each place of business for which it is issued and
26 in the manner required for the display of a master license.

27 **Sec. 4.** RCW 82.26.180 and 2005 c 180 s 15 are each amended to read
28 as follows:

29 The ((department)) board shall compile and maintain a current
30 record of the names of all distributors and retailers licensed under
31 this chapter and the status of their license or licenses. The
32 information must be updated on a monthly basis and published on the
33 ((department's)) board's official internet web site. This information
34 is not subject to the confidentiality provisions of RCW 82.32.330 and
35 shall be disclosed to manufacturers, distributors, retailers, and the
36 general public upon request.

1 **Sec. 5.** RCW 82.26.190 and 2005 c 180 s 16 are each amended to read
2 as follows:

3 (1)(a) No person may engage in or conduct business as a distributor
4 or retailer in this state after September 30, 2005, without a valid
5 license issued (~~by the department~~) under this chapter. Any person
6 who sells tobacco products to persons other than ultimate consumers or
7 who meets the definition of distributor under RCW 82.26.010(3)(d) must
8 obtain a distributor's license under this chapter. Any person who
9 sells tobacco products to ultimate consumers must obtain a retailer's
10 license under this chapter.

11 (b) A violation of this subsection (1) is punishable as a class C
12 felony according to chapter 9A.20 RCW.

13 (2)(a) No person engaged in or conducting business as a distributor
14 or retailer in this state may:

15 (i) Refuse to allow the department or the board, on demand, to make
16 a full inspection of any place of business where any of the tobacco
17 products taxed under this chapter are sold, stored, or handled, or
18 otherwise hinder or prevent such inspection;

19 (ii) Make, use, or present or exhibit to the department or the
20 board any invoice for any of the tobacco products taxed under this
21 chapter that bears an untrue date or falsely states the nature or
22 quantity of the goods invoiced; or

23 (iii) Fail to produce on demand of the department or the board all
24 invoices of all the tobacco products taxed under this chapter within
25 five years prior to such demand unless the person can show by
26 satisfactory proof that the nonproduction of the invoices was due to
27 causes beyond the person's control.

28 (b) No person, other than a licensed distributor or retailer, may
29 transport tobacco products for sale in this state for which the taxes
30 imposed under this chapter have not been paid unless:

31 (i) Notice of the transportation has been given as required under
32 RCW 82.26.140;

33 (ii) The person transporting the tobacco products actually
34 possesses invoices or delivery tickets showing the true name and
35 address of the consignor or seller, the true name and address of the
36 consignee or purchaser, and the quantity and brands of tobacco products
37 being transported; and

1 (iii) The tobacco products are consigned to or purchased by a
2 person in this state who is licensed under this chapter.

3 (c) A violation of this subsection (2) is a gross misdemeanor.

4 (3) Any person licensed under this chapter as a distributor, and
5 any person licensed under this chapter as a retailer, shall not operate
6 in any other capacity unless the additional appropriate license is
7 first secured. A violation of this subsection (3) is a misdemeanor.

8 (4) The penalties provided in this section are in addition to any
9 other penalties provided by law for violating the provisions of this
10 chapter or the rules adopted under this chapter.

11 **Sec. 6.** RCW 82.26.210 and 2005 c 180 s 14 are each amended to read
12 as follows:

13 A manufacturer that has manufacturer's representatives who sell or
14 distribute the manufacturer's tobacco products in this state must
15 provide the ((department)) board a list of the names and addresses of
16 all such representatives and must ensure that the list provided to the
17 ((department)) board is kept current. A manufacturer's representative
18 is not authorized to distribute or sell tobacco products in this state
19 unless the manufacturer that hired the representative has a valid
20 distributor's license under this chapter and that manufacturer provides
21 the ((department)) board a current list of all of its manufacturer's
22 representatives as required by this section. A manufacturer's
23 representative must carry a copy of the distributor's license of the
24 manufacturer that hired the representative at all times when selling or
25 distributing the manufacturer's tobacco products.

26 **Sec. 7.** RCW 82.26.220 and 2005 c 180 s 18 are each amended to read
27 as follows:

28 (1) The board shall enforce this chapter. The board may adopt,
29 amend, and repeal rules necessary to enforce and administer this
30 chapter.

31 (2) The department may adopt, amend, and repeal rules necessary to
32 administer this chapter. The ((~~department has full power and authority~~
33 ~~to~~)) board may revoke or suspend the distributor's or retailer's
34 license of any distributor or retailer of tobacco products in the state
35 upon sufficient cause showing a violation of this chapter or upon the

1 failure of the licensee to comply with any of the rules adopted under
2 it.

3 (3) A license shall not be suspended or revoked except upon notice
4 to the licensee and after a hearing as prescribed by the ((department))
5 board. The ((department)) board, upon finding that the licensee has
6 failed to comply with any provision of this chapter or of any rule
7 adopted under it, shall, in the case of the first offense, suspend the
8 license or licenses of the licensee for a period of not less than
9 thirty consecutive business days, and in the case of a second or
10 further offense, suspend the license or licenses for a period of not
11 less than ninety consecutive business days but not more than twelve
12 months, and in the event the ((department)) board finds the licensee
13 has been guilty of willful and persistent violations, it may revoke the
14 license or licenses.

15 (4) Any licenses issued under chapter 82.24 RCW to a person whose
16 license or licenses have been suspended or revoked under this section
17 shall also be suspended or revoked during the period of suspension or
18 revocation under this section.

19 (5) Any person whose license or licenses have been revoked under
20 this section may ((apply)) reapply to the ((department)) board at the
21 expiration of one year ((for a reinstatement)) of the license or
22 licenses. The license or licenses may be ((reinstated)) approved by
23 the ((department)) board if it appears to the satisfaction of the
24 ((department)) board that the licensee will comply with the provisions
25 of this chapter and the rules adopted under it.

26 (6) A person whose license has been suspended or revoked shall not
27 sell tobacco products or cigarettes or permit tobacco products or
28 cigarettes to be sold during the period of suspension or revocation on
29 the premises occupied by the person or upon other premises controlled
30 by the person or others or in any other manner or form.

31 (7) Any determination and order by the ((department)) board, and
32 any order of suspension or revocation by the ((department)) board of
33 the license or licenses issued under this chapter, or refusal to
34 reinstate a license or licenses after revocation is reviewable by an
35 appeal to the superior court of Thurston county. The superior court
36 shall review the order or ruling of the ((department)) board and may
37 hear the matter de novo, having due regard to the provisions of this
38 chapter and the duties imposed upon ((the department and)) the board.

1 (8) If the board makes an initial decision to deny a license or
2 renewal, or suspend or revoke a license, the applicant may request a
3 hearing subject to the applicable provisions under Title 34 RCW.

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