

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5340**

Chapter 278, Laws of 2009

61st Legislature  
2009 Regular Session

TOBACCO SALES--INTERNET AND MAIL ORDER

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 19, 2009  
YEAS 37 NAYS 9

BRAD OWEN

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**President of the Senate**

Passed by the House April 13, 2009  
YEAS 90 NAYS 7

FRANK CHOPP

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**Speaker of the House of Representatives**

Approved April 29, 2009, 10:36 a.m.

CHRISTINE GREGOIRE

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5340** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

FILED

April 29, 2009

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5340**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Prentice, Regala, Pflug, Shin, and Parlette; by request of Attorney General)

READ FIRST TIME 02/10/09.

1            AN ACT Relating to internet and mail order sales of certain tobacco  
2 products; amending RCW 70.155.010; adding a new section to chapter  
3 70.155 RCW; repealing RCW 70.155.105; and prescribing penalties.

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

5            **Sec. 1.** RCW 70.155.010 and 2006 c 14 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)) this chapter. In addition, for the  
9 purposes of this 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 cigarettes to a consumer in~~  
12 ~~the state where either: (a) The purchaser submits an order for a sale~~  
13 ~~by means of a telephonic or other method of voice transmission, mail~~  
14 ~~delivery, any other delivery service, or the internet or other online~~  
15 ~~service; or (b) the cigarettes are delivered by use of mail delivery or~~  
16 ~~any other delivery service. A sale of cigarettes shall be a delivery~~  
17 ~~sale regardless of whether the seller is located within or without the~~  
18 ~~state. A sale of cigarettes not for personal consumption to a person~~

1 ~~who is a wholesaler licensed pursuant to chapter 82.24 RCW or a~~  
2 ~~retailer pursuant to chapter 82.24 RCW is not a delivery sale.~~

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

7 ~~(4))~~ "Internet" means any computer network, telephonic network, or  
8 other electronic network.

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

11 ~~((5))~~ (4) "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 ~~((6))~~ (5) "Sampling" means the distribution of samples to members  
15 of the public.

16 ~~((7) "Shipping container" means a container in which cigarettes~~  
17 ~~are shipped in connection with a delivery sale.~~

18 ~~(8) "Shipping documents" means bills of lading, airbills, or any~~  
19 ~~other documents used to evidence the undertaking by a delivery service~~  
20 ~~to deliver letters, packages, or other containers.~~

21 ~~(9))~~ (6) "Tobacco product" means a product that contains tobacco  
22 and is intended for human use, including any product defined in RCW  
23 82.24.010(2) or 82.26.010(1), except that for the purposes of section  
24 2 of this act only, "tobacco product" does not include cigars defined  
25 in RCW 82.26.010 as to which one thousand units weigh more than three  
26 pounds.

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

29 (1) A person may not:

30 (a) Ship or transport, or cause to be shipped or transported, any  
31 tobacco product ordered or purchased by mail or through the internet to  
32 anyone in this state other than a licensed wholesaler or retailer; or

33 (b) With knowledge or reason to know of the violation, provide  
34 substantial assistance to a person who is in violation of this section.

35 (2)(a) A person who knowingly violates subsection (1) of this  
36 section is guilty of a class C felony, except that the maximum fine  
37 that may be imposed is five thousand dollars.

1 (b) In addition to or in lieu of any other civil or criminal remedy  
2 provided by law, a person who has violated subsection (1) of this  
3 section is subject to a civil penalty of up to five thousand dollars  
4 for each violation. The attorney general, acting in the name of the  
5 state, may seek recovery of the penalty in a civil action in superior  
6 court. For purposes of this subsection, each shipment or transport of  
7 tobacco products constitutes a separate violation.

8 (3) The attorney general may seek an injunction in superior court  
9 to restrain a threatened or actual violation of subsection (1) of this  
10 section and to compel compliance with subsection (1) of this section.

11 (4) Any violation of subsection (1) of this section is not  
12 reasonable in relation to the development and preservation of business  
13 and is an unfair and deceptive act or practice and an unfair method of  
14 competition in the conduct of trade or commerce in violation of RCW  
15 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for  
16 violation of subsection (1) of this section lies solely with the  
17 attorney general. Remedies provided by chapter 19.86 RCW are  
18 cumulative and not exclusive.

19 (5)(a) In any action brought under this section, the state is  
20 entitled to recover, in addition to other relief, the costs of  
21 investigation, expert witness fees, costs of the action, and reasonable  
22 attorneys' fees.

23 (b) If a court determines that a person has violated subsection (1)  
24 of this section, the court shall order any profits, gain, gross  
25 receipts, or other benefit from the violation to be disgorged and paid  
26 to the state treasurer for deposit in the general fund.

27 (6) Unless otherwise expressly provided, the penalties or remedies,  
28 or both, under this section are in addition to any other penalties and  
29 remedies available under any other law of this state.

30 NEW SECTION. **Sec. 3.** RCW 70.155.105 (Delivery sale of  
31 cigarettes--Requirements, unlawful practices--Penalties--Enforcement)  
32 and 2003 c 113 s 2 are each repealed.

Passed by the Senate April 19, 2009.

Passed by the House April 13, 2009.

Approved by the Governor April 29, 2009.

Filed in Office of Secretary of State April 29, 2009.