
SENATE BILL 6337

State of Washington 57th Legislature

2002 Regular Session

By Senators Oke, Haugen, Eide, Swecker, B. Sheldon, Hargrove, Spanel, Prentice, Jacobsen, Fraser, Gardner and Rasmussen

Read first time 01/16/2002. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to tobacco product sampling; amending RCW
2 70.155.010, 70.155.050, 70.155.090, 70.155.100, 82.24.120, and
3 82.24.230; repealing RCW 70.155.060 and 82.24.270; and prescribing
4 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) "Minor" refers to an individual who is less than eighteen years
13 old.

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

16 (4)) "Sample" means a tobacco product distributed to members of
17 the general public at no cost or at nominal cost for product promotion
18 purposes.

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

3 ~~(6))~~ (4) "Sampling" means the distribution of samples to members
4 of the ~~((general))~~ public ~~((in a public place))~~.

5 ~~((7))~~ (5) "Tobacco product" means a product that contains tobacco
6 and is intended for human ~~((consumption))~~ use, including any product
7 defined in RCW 82.24.010(2) or 82.26.010(1).

8 **Sec. 2.** RCW 70.155.050 and 1993 c 507 s 6 are each amended to read
9 as follows:

10 (1) No person may engage in the business of sampling ~~((within the~~
11 ~~state unless licensed to do so by the board. If a firm contracts with~~
12 ~~a manufacturer to distribute samples of the manufacturer's products,~~
13 ~~that firm is deemed to be the person engaged in the business of~~
14 ~~sampling))~~ products.

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

17 ~~(3) A sampler's license expires on the thirtieth day of June of~~
18 ~~each year and must be renewed annually upon payment of the appropriate~~
19 ~~fee.~~

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

25 ~~(5) A sampler's license entitles the licensee, and employees or~~
26 ~~agents of the licensee, to distribute samples at any lawful location in~~
27 ~~the state during the term of the license. A person engaged in sampling~~
28 ~~under the license shall carry the license or a copy at all times.))~~ A
29 violation of this section is a misdemeanor.

30 **Sec. 3.** RCW 70.155.090 and 1993 c 507 s 10 are each amended to
31 read as follows:

32 (1) Where there may be a question of a person's right to purchase
33 or obtain tobacco products by reason of age, the retailer~~((, sampler,))~~
34 or agent thereof, shall require the purchaser to present any one of the
35 following officially issued identification that shows the purchaser's
36 age and bears his or her signature and photograph: Liquor control
37 authority card of identification of a state or province of Canada;

1 driver's license, instruction permit, or identification card of a state
2 or province of Canada; "identocard" issued by the Washington state
3 department of licensing under chapter 46.20 RCW; United States military
4 identification; passport; or merchant marine identification card issued
5 by the United States coast guard.

6 (2) It is a defense to a prosecution under RCW 26.28.080(~~(+4)~~)
7 that the person making a sale reasonably relied on any of the
8 officially issued identification as defined in subsection (1) of this
9 section. The liquor control board shall waive the suspension or
10 revocation of a license if the licensee clearly establishes that he or
11 she acted in good faith to prevent violations and a violation occurred
12 despite the licensee's exercise of due diligence.

13 **Sec. 4.** RCW 70.155.100 and 1998 c 133 s 3 are each amended to read
14 as follows:

15 (1) The liquor control board may suspend or revoke a retailer's
16 license issued under RCW 82.24.510(1)(b) held by a business at any
17 location, or may impose a monetary penalty as set forth in subsection
18 (2) of this section, if the liquor control board finds that the
19 licensee has violated RCW 26.28.080, 70.155.020, 70.155.030,
20 70.155.040, 70.155.050, (~~70.155.060,~~) 70.155.070, or 70.155.090.

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

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

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

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

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

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

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

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

4 (c) For violations of RCW 70.155.040 occurring on the licensed
5 premises:

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

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

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

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

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

19 (d) For violations of RCW 70.155.050 (~~and 70.155.060~~), a monetary
20 penalty in the amount of three hundred dollars for each violation;

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

23 (3) The liquor control board may impose a monetary penalty upon any
24 person other than a licensed cigarette retailer (~~or licensed sampler~~)
25 if the liquor control board finds that the person has violated RCW
26 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050,
27 (~~70.155.060~~), 70.155.070, or 70.155.090.

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

31 (a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for
32 the first violation and one hundred dollars for each subsequent
33 violation;

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

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

38 (d) For violations of RCW 70.155.050 (~~and 70.155.060~~), three
39 hundred dollars for each violation;

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

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

6 (6) The liquor control board may issue a cease and desist order to
7 any person who is found by the liquor control board to have violated or
8 intending to violate the provisions of this chapter, RCW 26.28.080 or
9 82.24.500, requiring such person to cease specified conduct that is in
10 violation. The issuance of a cease and desist order shall not preclude
11 the imposition of other sanctions authorized by this statute or any
12 other provision of law.

13 (7) The liquor control board may seek injunctive relief to enforce
14 the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The
15 liquor control board may initiate legal action to collect civil
16 penalties imposed under this chapter if the same have not been paid
17 within thirty days after imposition of such penalties. In any action
18 filed by the liquor control board under this chapter, the court may, in
19 addition to any other relief, award the liquor control board reasonable
20 attorneys' fees and costs.

21 (8) All proceedings under subsections (1) through (6) of this
22 section shall be conducted in accordance with chapter 34.05 RCW.

23 (9) The liquor control board may reduce or waive either the
24 penalties or the suspension or revocation of a license, or both, as set
25 forth in this chapter where the elements of proof are inadequate or
26 where there are mitigating circumstances. Mitigating circumstances may
27 include, but are not limited to, an exercise of due diligence by a
28 retailer. Further, the board may exceed penalties set forth in this
29 chapter based on aggravating circumstances.

30 **Sec. 5.** RCW 82.24.120 and 1996 c 149 s 7 are each amended to read
31 as follows:

32 (1) If any person, subject to the provisions of this chapter or any
33 rules adopted by the department of revenue under authority hereof, is
34 found to have failed to affix the stamps required, or to have them
35 affixed as herein provided, or to pay any tax due hereunder, or to have
36 violated any of the provisions of this chapter or rules adopted by the
37 department of revenue in the administration hereof, there shall be
38 assessed and collected from such person, in addition to any tax that

1 may be found due, a remedial penalty equal to the greater of ten
2 dollars per package of unstamped cigarettes or two hundred fifty
3 dollars, plus interest on the amount of the tax at the rate as computed
4 under RCW 82.32.050(2) from the date the tax became due until the date
5 of payment, and upon notice mailed to the last known address of the
6 person. The amount shall become due and payable in thirty days from
7 the date of the notice. If the amount remains unpaid, the department
8 or its duly authorized agent may make immediate demand upon such person
9 for the payment of all such taxes, penalties, and interest.

10 (2) The department, for good reason shown, may waive or cancel all
11 or any part of penalties imposed, but the taxpayer must pay all taxes
12 due and interest thereon, at the rate as computed under RCW
13 82.32.050(2) from the date the tax became due until the date of
14 payment.

15 (3) The keeping of any unstamped articles coming within the
16 provisions of this chapter shall be prima facie evidence of intent to
17 violate the provisions of this chapter.

18 (4) This section does not apply to taxes or tax increases due under
19 RCW ((~~82.24.270~~ and)) 82.24.280.

20 **Sec. 6.** RCW 82.24.230 and 1995 c 278 s 9 are each amended to read
21 as follows:

22 All of the provisions contained in chapter 82.32 RCW shall have
23 full force and application with respect to taxes imposed under the
24 provisions of this chapter, except the following sections: RCW
25 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as
26 noted otherwise in RCW ((~~82.24.270~~ and)) 82.24.280.

27 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
28 repealed:

29 (1) RCW 70.155.060 (Sampling in public places) and 1993 c 507 s 7;
30 and

31 (2) RCW 82.24.270 (Cigarettes given away--Stamp not required--
32 Payment of tax--Interest--Payment of amount less than due--Penalties--
33 Administration) and 1996 c 149 s 9 & 1995 c 278 s 12.

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