

2 ESHB 2071 - S COMM AMD

3 By Committee on Health & Human Services

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that while present
8 state law prohibits the sale and distribution of tobacco to minors,
9 youth obtain tobacco products with ease. Availability and lack of
10 enforcement put tobacco products in the hands of youth.

11 Federal law requires states to enforce laws prohibiting sale and
12 distribution of tobacco products to minors in a manner that can
13 reasonably be expected to reduce the extent to which the products are
14 available to minors. It is imperative to effectively reduce the sale,
15 distribution, and availability of tobacco products to minors.

16 NEW SECTION. **Sec. 2.** The definitions set forth in RCW 82.24.010
17 shall apply to sections 3 through 14 of this act. In addition, for the
18 purposes of this chapter, unless otherwise required by the context:

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

20 (2) "Minor" refers to an individual who is less than eighteen
21 years old.

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

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

27 (5) "Sampler" means a person engaged in the business of sampling
28 other than a retailer.

29 (6) "Sampling" means the distribution of samples to members of the
30 general public in a public place.

31 (7) "Tobacco product" means a product that contains tobacco and is
32 intended for human consumption.

33 NEW SECTION. **Sec. 3.** A person who holds a license issued under
34 RCW 82.24.520 or 82.24.530 shall:

1 (1) Display the license or a copy in a prominent location at the
2 outlet for which the license is issued; and

3 (2) Display a sign concerning the prohibition of tobacco sales to
4 minors.

5 Such sign shall:

6 (a) Be posted so that it is clearly visible to anyone purchasing
7 tobacco products from the licensee;

8 (b) Be designed and produced by the department of health to read:
9 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY
10 PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED
11 FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and

12 (c) Be provided free of charge by the liquor control board.

13 NEW SECTION. **Sec. 4.** No person shall sell or permit to be sold
14 any tobacco product through any device that mechanically dispenses
15 tobacco products unless the device is located fully within premises
16 from which minors are prohibited or in industrial worksites where
17 minors are not employed and not less than ten feet from all entrance or
18 exit ways to and from each premises.

19 NEW SECTION. **Sec. 5.** No person shall sell or permit to be sold
20 cigarettes not in the original unopened package or container to which
21 the stamps required by RCW 82.24.060 have been affixed.

22 This section does not apply to the sale of loose leaf tobacco by a
23 retail business that generates a minimum of sixty percent of annual
24 gross sales from the sale of tobacco products.

25 NEW SECTION. **Sec. 6.** (1) No person may engage in the business of
26 sampling within the state unless licensed to do so by the board. If a
27 firm contracts with a manufacturer to distribute samples of the
28 manufacturer's products, that firm is deemed to be the person engaged
29 in the business of sampling.

30 (2) The board shall issue a license to a sampler not otherwise
31 disqualified by section 11 of this act upon application and payment of
32 the fee.

33 (3) A sampler's license expires on the thirtieth day of June of
34 each year and must be renewed annually upon payment of the appropriate
35 fee.

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

6 (5) A sampler's license entitles the licensee, and employees or
7 agents of the licensee, to distribute samples at any lawful location in
8 the state during the term of the license. A person engaged in sampling
9 under the license shall carry the license or a copy at all times.

10 NEW SECTION. **Sec. 7.** (1) No person may distribute or offer to
11 distribute samples in a public place. This prohibition does not apply
12 to sampling (a) in an area to which persons under the age of eighteen
13 are denied admission, (b) in or at a store or concession to which a
14 retailer's license has been issued, or (c) at or adjacent to a
15 production, repair, or outdoor construction site or facility.

16 (2) Notwithstanding subsection (1) of this section, no person may
17 distribute or offer to distribute samples in or on a public street,
18 sidewalk, or park that is within five hundred feet of a playground,
19 school, or other facility when that facility is being used primarily by
20 persons under the age of eighteen for recreational, educational, or
21 other purposes.

22 NEW SECTION. **Sec. 8.** No person shall give or distribute
23 cigarettes or other tobacco products to a person by a coupon if such
24 coupon is redeemed in any manner that does not require an in-person
25 transaction in a retail store.

26 NEW SECTION. **Sec. 9.** A person under the age of eighteen who
27 purchases or attempts to purchase or obtains or attempts to obtain
28 cigarettes or tobacco products commits a class 3 civil infraction under
29 chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80
30 RCW or participation in a smoking cessation program, or both. This
31 provision does not apply if a person under the age of eighteen, with
32 parental authorization, is participating in a controlled purchase as
33 part of a liquor control board, law enforcement, or local health
34 department activity.

1 NEW SECTION. **Sec. 10.** (1) Where there may be a question of a
2 person's right to purchase or obtain tobacco products by reason of age,
3 the retailer, sampler, or agent thereof, shall require the purchaser to
4 present any one of the following officially issued identification that
5 shows the purchaser's age and bears his or her signature and
6 photograph: Liquor control authority card of identification of a state
7 or province of Canada; driver's license, instruction permit, or
8 identification card of a state or province of Canada; "identocard"
9 issued by the Washington state department of licensing under chapter
10 46.20 RCW; United States military identification; passport; or merchant
11 marine identification card issued by the United States coast guard.

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

19 NEW SECTION. **Sec. 11.** (1) The liquor control board may suspend or
20 revoke a retailer's license held by a business at any location, or may
21 impose a monetary penalty as set forth in subsection (2) of this
22 section, if the liquor control board finds that the licensee has
23 violated RCW 26.28.080(4), or section 3, 4, 5, 6, 7, 8, or 10 of this
24 act.

25 (2) The sanctions that the liquor control board may impose against
26 a person licensed under RCW 82.24.530 and sections 6 and 7 of this act
27 based upon one or more findings under subsection (1) of this section
28 may not exceed the following:

29 (a) For violation of RCW 26.28.080(4) or section 3 of this act:

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

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

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

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

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

7 (b) For violations of section 4 of this act, a monetary penalty in
8 the amount of one hundred dollars for each day upon which such
9 violation occurred;

10 (c) For violations of section 5 of this act occurring on the
11 licensed premises:

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

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

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

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

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

25 (d) For violations of sections 6 and 7 of this act, a monetary
26 penalty in the amount of three hundred dollars for each violation;

27 (e) For violations of section 8 of this act, a monetary penalty in
28 the amount of one thousand dollars for each violation.

29 (3) The liquor control board may impose a monetary penalty upon any
30 person other than a licensed cigarette retailer or licensed sampler if
31 the liquor control board finds that the person has violated RCW
32 26.28.080(4), or section 3, 4, 5, 6, 7, 8, or 10 of this act.

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

36 (a) For violation of RCW 26.28.080(4) or section 3 of this act,
37 fifty dollars for the first violation and one hundred dollars for each
38 subsequent violation;

1 (b) For violations of section 4 of this act, one hundred dollars
2 for each day upon which such violation occurred;

3 (c) For violations of section 5 of this act, one hundred dollars
4 for each violation;

5 (d) For violations of sections 6 and 7 of this act, three hundred
6 dollars for each violation;

7 (e) For violations of section 8 of this act, one thousand dollars
8 for each violation.

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

12 (6) The liquor control board may issue a cease and desist order to
13 any person who is found by the liquor control board to have violated or
14 intending to violate the provisions of this chapter, RCW 26.28.080(4)
15 or 82.24.500, requiring such person to cease specified conduct that is
16 in violation. The issuance of a cease and desist order shall not
17 preclude the imposition of other sanctions authorized by this statute
18 or any other provision of law.

19 (7) The liquor control board may seek injunctive relief to enforce
20 the provisions of RCW 26.28.080(4) or 82.24.500 or this chapter. The
21 liquor control board may initiate legal action to collect civil
22 penalties imposed under this chapter if the same have not been paid
23 within thirty days after imposition of such penalties. In any action
24 filed by the liquor control board under this chapter, the court may, in
25 addition to any other relief, award the liquor control board reasonable
26 attorneys' fees and costs.

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

29 NEW SECTION. **Sec. 12.** (1) The liquor control board shall, in
30 addition to the board's other powers and authorities, have the
31 authority to enforce the provisions of this chapter and RCW
32 26.28.080(4) and 82.24.500. The liquor control board shall have full
33 power to revoke or suspend the license of any retailer or wholesaler in
34 accordance with the provisions of section 11 of this act.

35 (2) The liquor control board and the board's authorized agents or
36 employees shall have full power and authority to enter any place of
37 business where tobacco products are sold for the purpose of enforcing
38 the provisions of this chapter.

1 (3) For the purpose of enforcing the provisions of this chapter and
2 RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer
3 of the liquor control board who has reasonable grounds to believe a
4 person observed by the officer purchasing, attempting to purchase, or
5 in possession of tobacco products is under the age of eighteen years of
6 age, may detain such person for a reasonable period of time and in such
7 a reasonable manner as is necessary to determine the person's true
8 identity and date of birth. Further, tobacco products possessed by
9 persons under the age of eighteen years of age are considered
10 contraband and may be seized by a peace officer or enforcement officer
11 of the liquor control board.

12 (4) The liquor control board may work with local county health
13 departments or districts and local law enforcement agencies to conduct
14 random, unannounced, inspections to assure compliance.

15 NEW SECTION. **Sec. 13.** (1) The youth tobacco prevention account is
16 created in the state treasury. All fees collected pursuant to RCW
17 82.24.520 and 82.24.530 and funds collected by the liquor control board
18 from the imposition of monetary penalties and samplers' fees shall be
19 deposited into this account, except that ten percent of all such fees
20 and penalties shall be deposited in the state general fund.

21 (2) Moneys appropriated from the youth tobacco prevention account
22 to the department of health shall be used by the department of health
23 for implementation of this chapter, including collection and reporting
24 of data regarding enforcement and the extent to which access to tobacco
25 products by youth has been reduced.

26 (3) The department of health shall enter into interagency
27 agreements with the liquor control board to pay the costs incurred, up
28 to thirty percent of available funds, in carrying out its enforcement
29 responsibilities under this chapter. Such agreements shall set forth
30 standards of enforcement, consistent with the funding available, so as
31 to reduce the extent to which tobacco products are available to
32 individuals under the age of eighteen. The agreements shall also set
33 forth requirements for data reporting by the liquor control board
34 regarding its enforcement activities.

35 (4) The department of health and the department of revenue shall
36 enter into an interagency agreement for payment of the cost of
37 administering the tobacco retailer licensing system and for the

1 provision of quarterly documentation of tobacco wholesaler, retailer,
2 and vending machine names and locations.

3 (5) The department of health shall, within up to seventy percent of
4 available funds, provide grants to local health departments or other
5 local community agencies to develop and implement coordinated tobacco
6 intervention strategies to prevent and reduce tobacco use by youth.

7 NEW SECTION. **Sec. 14.** This chapter preempts political
8 subdivisions from adopting or enforcing requirements for the licensure
9 and regulation of tobacco product promotions and sales within retail
10 stores, except that political subdivisions that have adopted ordinances
11 prohibiting sampling by January 1, 1993, may continue to enforce these
12 ordinances. No political subdivision may: (1) Impose fees or license
13 requirements on retail businesses for possessing or selling cigarettes
14 or tobacco products, other than general business taxes or license fees
15 not primarily levied on tobacco products; or (2) regulate or prohibit
16 activities covered by sections 3 through 9 of this act. This chapter
17 does not otherwise preempt political subdivisions from adopting
18 ordinances regulating the sale, purchase, use, or promotion of tobacco
19 products not inconsistent with chapter ..., Laws of 1993 (this act).

20 **Sec. 15.** RCW 82.24.530 and 1986 c 321 s 7 are each amended to read
21 as follows:

22 A fee of (~~ten~~) ninety-three dollars shall accompany each
23 retailer's license application or license renewal application. A
24 separate license is required for each separate location at which the
25 retailer operates. A fee of (~~one~~) thirty additional dollars for each
26 vending machine shall accompany each application or renewal for a
27 license issued to a retail dealer operating a cigarette vending
28 machine.

29 NEW SECTION. **Sec. 16.** The department of health shall report to
30 the house of representatives and senate committees with jurisdiction
31 for health issues no later than February 1, 1995, on the effectiveness
32 of enforcement and education activities as specified in this act. This
33 study shall include information concerning the adequacy of revenue to
34 support enforcement and education activities.

1 **Sec. 17.** RCW 82.24.550 and 1986 c 321 s 9 are each amended to read
2 as follows:

3 (1) The department of revenue shall enforce the provisions of this
4 chapter except RCW 82.24.500, which will be enforced by the liquor
5 control board. The department of revenue may adopt, amend, and repeal
6 rules necessary to enforce and administer the provisions of this
7 chapter. The department of revenue has full power and authority to
8 revoke or suspend the license or permit of any wholesale or retail
9 cigarette dealer in the state upon sufficient cause appearing of the
10 violation of this chapter or upon the failure of such licensee to
11 comply with any of the provisions of this chapter.

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

24 (3) Any person whose license or licenses have been so revoked may
25 apply to the department of revenue at the expiration of one year for a
26 reinstatement of the license or licenses. The license or licenses may
27 be reinstated by the department of revenue if it appears to the
28 satisfaction of the department of revenue that the licensee will comply
29 with the provisions of this chapter and the rules promulgated
30 thereunder.

31 (4) A person whose license has been suspended or revoked shall not
32 sell cigarettes or permit cigarettes to be sold during the period of
33 such suspension or revocation on the premises occupied by the person or
34 upon other premises controlled by the person or others or in any other
35 manner or form whatever.

36 (5) Any determination and order by the department of revenue, and
37 any order of suspension or revocation by the department of revenue of
38 the license or licenses, or refusal to reinstate a license or licenses
39 after revocation shall be reviewable by an appeal to the superior court

1 of Thurston county. The superior court shall review the order or
2 ruling of the department of revenue and may hear the matter de novo,
3 having due regard to the provisions of this chapter and the duties
4 imposed upon the department of revenue.

5 **Sec. 18.** RCW 82.24.560 and 1986 c 321 s 10 are each amended to
6 read as follows:

7 Except as specified in section 13 of this act, all fees and
8 penalties received or collected by the department of revenue pursuant
9 to this chapter shall be paid to the state treasurer, to be credited to
10 the general fund.

11 NEW SECTION. **Sec. 19.** Sections 2 through 14 of this act shall
12 constitute a new chapter in Title 70 RCW.

13 NEW SECTION. **Sec. 20.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected."

17 **ESHB 2071** - S COMM AMD
18 By Committee on Health & Human Services

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20 On page 1, line 1 of the title, after "tobacco;" strike the
21 remainder of the title and insert "amending RCW 82.24.530, 82.24.550,
22 and 82.24.560; adding a new chapter to Title 70 RCW; creating new
23 sections; and prescribing penalties."

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