

---

ENGROSSED SUBSTITUTE HOUSE BILL 2071

---

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Health Care (originally sponsored by Representatives L. Johnson, Dellwo, Quall, Campbell and Karahalios)

Read first time 03/03/93.

1 AN ACT Relating to access to tobacco; amending RCW 82.24.530,  
2 82.24.550, and 82.24.560; adding a new chapter to Title 70 RCW;  
3 creating new sections; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) Display a sign concerning the prohibition of tobacco sales to  
19 minors.

20 Such sign shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5        NEW SECTION.     **Sec. 9.**     A person under the age of eighteen who  
6 purchases or attempts to purchase cigarettes or tobacco products  
7 commits a class 3 civil infraction under chapter 7.80 RCW and is  
8 subject to a fine as set out in chapter 7.80 RCW or participation in a  
9 smoking cessation program, or both. This provision does not apply if  
10 a person under the age of eighteen, with parental authorization, is  
11 participating in a controlled purchase as part of a liquor control  
12 board, law enforcement, or local health department activity.

13        NEW SECTION.     **Sec. 10.**     (1) Where there may be a question of a  
14 person's right to purchase or obtain tobacco products by reason of age,  
15 the retailer, sampler, or agent thereof, shall require the purchaser to  
16 present any one of the following officially issued identification that  
17 shows the purchaser's age and bears his or her signature and  
18 photograph: Liquor control authority card of identification of a state  
19 or province of Canada; driver's license, instruction permit, or  
20 identification card of a state or province of Canada; "identocard"  
21 issued by the Washington state department of licensing under chapter  
22 46.20 RCW; United States military identification; passport; or merchant  
23 marine identification card issued by the United States coast guard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (6) The liquor control board may issue a cease and desist order to  
25 any person who is found by the liquor control board to have violated or  
26 intending to violate the provisions of this chapter, RCW 26.28.080(4)  
27 or 82.24.500, requiring such person to cease specified conduct that is  
28 in violation. The issuance of a cease and desist order shall not  
29 preclude the imposition of other sanctions authorized by this statute  
30 or any other provision of law.

31 (7) The liquor control board may seek injunctive relief to enforce  
32 the provisions of RCW 26.28.080(4) or 82.24.500 or this chapter. The  
33 liquor control board may initiate legal action to collect civil  
34 penalties imposed under this chapter if the same have not been paid  
35 within thirty days after imposition of such penalties. In any action  
36 filed by the liquor control board under this chapter, the court may, in  
37 addition to any other relief, award the liquor control board reasonable  
38 attorneys' fees and costs.

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

3 NEW SECTION. **Sec. 12.** (1) The liquor control board shall, in  
4 addition to the board's other powers and authorities, have the  
5 authority to enforce the provisions of this chapter and RCW  
6 26.28.080(4) and 82.24.500. The liquor control board shall have full  
7 power to revoke or suspend the license of any retailer or wholesaler in  
8 accordance with the provisions of section 11 of this act.

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

13 (3) For the purpose of enforcing the provisions of this chapter and  
14 RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer  
15 of the liquor control board who has reasonable grounds to believe a  
16 person observed by the officer purchasing, attempting to purchase, or  
17 in possession of tobacco products is under the age of eighteen years of  
18 age, may detain such person for a reasonable period of time and in such  
19 a reasonable manner as is necessary to determine the person's true  
20 identity and date of birth. Further, tobacco products possessed by  
21 persons under the age of eighteen years of age are considered  
22 contraband and may be seized by a peace officer or enforcement officer  
23 of the liquor control board.

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

27 NEW SECTION. **Sec. 13.** (1) The youth tobacco prevention account is  
28 created in the state treasury. All fees collected pursuant to RCW  
29 82.24.520 and 82.24.530 and funds collected by the liquor control board  
30 from the imposition of monetary penalties shall be deposited into this  
31 account, except that thirteen percent of all such fees and penalties  
32 shall be deposited in the state general fund.

33 (2) Moneys appropriated from the youth tobacco prevention account  
34 to the department of health shall be used by the department of health  
35 for implementation of this chapter, including collection and reporting  
36 of data regarding enforcement and the extent to which access to tobacco  
37 products by youth has been reduced.

1 (3) The department of health shall enter into interagency  
2 agreements with the liquor control board to pay the costs incurred, up  
3 to thirty percent of available funds, in carrying out its enforcement  
4 responsibilities under this chapter. Such agreements shall set forth  
5 standards of enforcement, consistent with the funding available, so as  
6 to reduce the extent to which tobacco products are available to  
7 individuals under the age of eighteen. The agreements shall also set  
8 forth requirements for data reporting by the liquor control board  
9 regarding its enforcement activities.

10 (4) The department of health and the department of revenue shall  
11 enter into an interagency agreement for payment of the cost of  
12 administering the tobacco retailer licensing system and for the  
13 provision of quarterly documentation of tobacco wholesaler, retailer,  
14 and vending machine names and locations.

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

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

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

34 A fee of (~~ten~~) ninety-three dollars shall accompany each  
35 retailer's license application or license renewal application. A  
36 separate license is required for each separate location at which the  
37 retailer operates. A fee of (~~one~~) thirty additional dollars for each



1 vending machine shall accompany each application or renewal for a  
2 license issued to a retail dealer operating a cigarette vending  
3 machine.

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

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

12 (1) The department of revenue shall enforce the provisions of this  
13 chapter except RCW 82.24.500, which will be enforced by the liquor  
14 control board. The department of revenue may adopt, amend, and repeal  
15 rules necessary to enforce and administer the provisions of this  
16 chapter. The department of revenue has full power and authority to  
17 revoke or suspend the license or permit of any wholesale or retail  
18 cigarette dealer in the state upon sufficient cause appearing of the  
19 violation of this chapter or upon the failure of such licensee to  
20 comply with any of the provisions of this chapter.

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

33 (3) Any person whose license or licenses have been so revoked may  
34 apply to the department of revenue at the expiration of one year for a  
35 reinstatement of the license or licenses. The license or licenses may  
36 be reinstated by the department of revenue if it appears to the  
37 satisfaction of the department of revenue that the licensee will comply

1 with the provisions of this chapter and the rules promulgated  
2 thereunder.

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

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

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

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

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

24 NEW SECTION. **Sec. 20.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

--- END ---