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HOUSE BILL 2071

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State of Washington                      53rd Legislature                      1993 Regular Session

By Representatives L. Johnson, Dellwo, Quall, Campbell and Karahalios

Read first time 02/26/93. Referred to Committee on Health Care.

1            AN ACT Relating to access to tobacco; amending RCW 82.24.520,  
2 82.24.530, 82.24.550, and 82.24.560; adding new sections to chapter  
3 82.24 RCW; creating a new section; and prescribing penalties.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that the leading cause  
6 of preventable death is tobacco use. Further, the legislature  
7 recognizes the high rate of smoking prevalence by youth and young  
8 pregnant women in our state. The vast majority of new smokers are  
9 teenagers or younger children. The earlier a child starts using  
10 tobacco the more likely that he or she will be unable to quit.

11            The legislature finds that youth obtain tobacco products with ease.  
12 Tobacco products that are provided free or at nominal charge are likely  
13 to fall into the hands of youth, and the sale of single cigarettes are  
14 more affordable to youth. The effective enforcement of the prohibition  
15 of sales to minors is essential. By the time Washington state youth  
16 become high school seniors, one out of every four is an addicted  
17 smoker.

1        NEW SECTION.    **Sec. 2.**    (1) The definitions set forth in RCW  
2 82.24.010 shall apply to sections 3 through 12 of this act, except that  
3 "department" refers to the Washington state department of health.

4        (2) "Board" as used in sections 3 through 12 of this act refers to  
5 the Washington state board of health.

6        (3) "Minor" as used in sections 3 through 12 of this act refers to  
7 an individual who is less than eighteen years old.

8        NEW SECTION.    **Sec. 3.**    A person that holds a license issued under  
9 RCW 82.24.520 or 82.24.530 shall:

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

12        (2) Display a sign concerning the prohibition of tobacco sales to  
13 minors.

14        Such sign shall:

15        (a) Be posted so that it is clearly visible to a person purchasing  
16 tobacco products from the licensee;

17        (b) Be designed and produced by the department to read: "THE SALE  
18 OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY  
19 STATE LAW, PHOTO ID REQUIRED"; and

20        (c) Be provided free of charge by the local county health  
21 department or district.

22        NEW SECTION.    **Sec. 4.**    No person shall sell or permit to be sold a  
23 tobacco product through a vending machine unless the device is located  
24 fully within premises from which minors are prohibited and not less  
25 than ten feet from all entrance or exit ways to and from each premise.

26        NEW SECTION.    **Sec. 5.**    No person shall sell or permit to be sold a  
27 tobacco product not in the original unopened package or container to  
28 which the stamps required by RCW 82.24.060 have been affixed.

29        This section does not apply to a retail business that specializes  
30 in the sale of loose leaf tobacco and generates a minimum of sixty  
31 percent of annual gross sales from the sale of tobacco products.

32        NEW SECTION.    **Sec. 6.**    No retailer, wholesaler, tobacco  
33 manufacturer, or agent thereof, shall give or distribute cigarettes or  
34 other tobacco products to a person at no cost.

1        NEW SECTION.    **Sec. 7.**    No person shall give or distribute  
2 cigarettes or other tobacco products to a person at a reduced price by  
3 a coupon if the coupon is redeemed in a manner that does not require an  
4 in-person transaction between a buyer and seller.

5        NEW SECTION.    **Sec. 8.**    The board may adopt rules necessary for the  
6 enforcement of sections 3 through 7 of this act. Minimum standards  
7 shall ensure enforcement in a manner to reduce the extent to which  
8 tobacco products are available to individuals under the age of  
9 eighteen.

10       NEW SECTION.    **Sec. 9.**    The youth tobacco account is created in the  
11 state treasury. All fees collected in RCW 82.24.520 and 82.24.530  
12 shall be deposited in this account.

13       Expenditures from the account may be used only for the purposes of  
14 sections 3 through 13 of this act.

15       Moneys appropriated from the youth tobacco account to the  
16 department shall be used by the department for implementation of  
17 sections 3 through 13 of this act, including collection and reporting  
18 of data regarding enforcement and prevention efforts.

19       Funds collected by local health departments from the imposition of  
20 civil penalties under this chapter shall be retained by them and used  
21 for enforcement and prevention efforts.

22       NEW SECTION.    **Sec. 10.**    The department of health and the department  
23 of revenue shall enter into an interagency agreement for payment of the  
24 cost of administering the tobacco wholesaler, retailer, and vending  
25 machine licensing systems out of the funds appropriated to the  
26 department of health from the youth tobacco account.

27       The department shall use funds appropriated to it to contract with  
28 local health departments for youth tobacco prevention and education  
29 activities and for enforcement of sections 3 through 13 of this act.  
30 The department shall set forth requirements for data reporting  
31 regarding enforcement and prevention activities.

32       NEW SECTION.    **Sec. 11.**    Local health departments shall enforce the  
33 provisions of this chapter and shall have authority to enforce  
34 provisions of RCW 82.24.500. Local health departments have full power  
35 and authority to revoke or suspend the license or permit of any

1 wholesale or retail cigarette or tobacco dealer for the purposes of  
2 enforcing this chapter.

3 Local health departments or duly recognized agents of a local  
4 health department have full power and authority to enter a place of  
5 business where tobacco products are sold for the purpose of enforcing  
6 the provisions of this chapter.

7 NEW SECTION. **Sec. 12.** (1) The local health officer may suspend or  
8 revoke a retailer's license held by a business at a location within the  
9 health officer's geographical jurisdiction, or may impose a civil  
10 penalty as set forth in subsection (2) of this section, if the health  
11 officer finds that the licensee has violated RCW 26.28.080(4), or  
12 section 3, 4, 5, 6, or 7 of this act.

13 (2) The sanctions that a local health officer may impose against a  
14 person licensed under RCW 82.24.530 based upon one or more findings may  
15 not exceed the following:

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

17 (i) A civil penalty of one hundred dollars for the first violation  
18 within any two-year period;

19 (ii) A civil penalty of three hundred dollars for the second  
20 violation within any two-year period;

21 (iii) A civil penalty of one thousand dollars and suspension of the  
22 license for a period of six months for the third violation within any  
23 two-year period;

24 (iv) A civil penalty of one thousand five hundred dollars and  
25 suspension of the license for a period of twelve months for the fourth  
26 violation within any two-year period;

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

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

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

35 (i) A civil penalty of one hundred dollars for the first violation  
36 within any two-year period;

37 (ii) A civil penalty of three hundred dollars for the second  
38 violation within any two-year period;

1 (iii) A civil penalty of one thousand dollars and suspension of the  
2 license for a period of six months for the third violation within any  
3 two-year period;

4 (iv) A civil penalty of one thousand five hundred dollars and  
5 suspension of the license for a period of twelve months for the fourth  
6 violation within any two-year period;

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

10 (d) For violations of section 6 of this act, a civil penalty in the  
11 amount of three hundred dollars for each violation;

12 (e) For violations of section 7 of this act, a civil penalty in the  
13 amount of one thousand dollars for each violation.

14 (3) The local health officer may impose a civil penalty upon any  
15 person other than a licensed cigarette retailer if the health officer  
16 finds that the person has violated RCW 26.28.080(4), or section 3, 4,  
17 5, 6, or 7 of this act within the health officer's geographical  
18 jurisdiction.

19 (4) The civil penalty that a local health officer may impose based  
20 upon one or more findings under subsection (3) of this section may not  
21 exceed the following:

22 (a) For violation of RCW 26.28.080(4) or section 3 of this act, one  
23 hundred dollars for each violation;

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

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

28 (d) For violations of section 6 of this act, three hundred dollars  
29 for each violation;

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

32 (5) The local health officer may issue a cease and desist order to  
33 a person who is found by the local health officer to have violated or  
34 intending to violate the provisions of sections 3 through 13 of this  
35 act or of RCW 82.24.500, requiring the person to cease the specified  
36 conduct that is in violation. The issuance of a cease and desist order  
37 does not preclude the imposition of other sanctions authorized by this  
38 statute or any other provision of law.

1 (6) The local health officer may seek injunctive relief to enforce  
2 the provisions of RCW 82.24.500 or sections 3 through 13 of this act.  
3 The health officer may initiate legal action to collect civil penalties  
4 imposed under chapter . . . , Laws of 1993 (this act) if the penalties  
5 have not been paid within thirty days after imposition of the  
6 penalties. In an action filed by the local health officer under the  
7 provisions of sections 3 through 13 of this act, the court may, in  
8 addition to any other relief, award the health officer reasonable  
9 attorneys' fees and costs.

10 (7) An order issued by the local health officer under the  
11 provisions of this section may be appealed to the local board of  
12 health. The appeal shall be conducted de novo, and the health officer  
13 shall have the burden of proving by a preponderance of the evidence the  
14 violations set forth in the order.

15 **Sec. 13.** RCW 82.24.520 and 1986 c 321 s 6 are each amended to read  
16 as follows:

17 (1) A fee of (~~six hundred fifty~~) thirteen hundred dollars shall  
18 accompany each wholesaler's license application or license renewal  
19 application. If a wholesaler sells or intends to sell cigarettes at  
20 two or more places of business, whether established or temporary, a  
21 separate license with a license fee of (~~one hundred fifteen~~) two  
22 hundred fifty dollars shall be required for each additional place of  
23 business.

24 (2) Each license, or certificate thereof, and such other evidence  
25 of license as the department of revenue requires, shall be exhibited in  
26 the place of business for which it is issued and in such manner as is  
27 prescribed for the display of a master license.

28 (3) The department of revenue shall require each licensed  
29 wholesaler to file with the department a bond in an amount not less  
30 than one thousand dollars to guarantee the proper performance of the  
31 duties and the discharge of the liabilities under this chapter. The  
32 bond shall be executed by such licensed wholesaler as principal, and by  
33 a corporation approved by the department of revenue and authorized to  
34 engage in business as a surety company in this state, as surety. The  
35 bond shall run concurrently with the wholesaler's license.

36 **Sec. 14.** RCW 82.24.530 and 1986 c 321 s 7 are each amended to read  
37 as follows:

1 A fee of (~~ten~~) ninety-three dollars shall accompany each  
2 retailer's license application or license renewal application. A  
3 separate license is required for each place of business at which the  
4 retailer operates. A fee of (~~one~~) thirty additional dollars for each  
5 vending machine shall accompany each application or renewal for a  
6 license issued to a retail dealer operating a cigarette vending  
7 machine.

8 **Sec. 15.** RCW 82.24.550 and 1986 c 321 s 9 are each amended to read  
9 as follows:

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

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

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

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

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

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

16 Except as specified in section 9 of this act, all fees and  
17 penalties received or collected by the department of revenue pursuant  
18 to this chapter shall be paid to the state treasurer, to be credited to  
19 the ((general fund)) youth tobacco account.

20 NEW SECTION. **Sec. 17.** Sections 2 through 12 of this act are each  
21 added to chapter 82.24 RCW.

22 NEW SECTION. **Sec. 18.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

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