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HOUSE BILL 1134

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Cody, Chopp and Anderson; by request of Governor Lowry

Read first time 01/15/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to regulation and control of tobacco products;  
2 amending RCW 70.155.010, 70.155.030, 70.155.040, 70.155.050,  
3 70.155.100, 70.155.110, 70.155.130, 82.24.500, and 82.24.550; adding a  
4 new section to chapter 70.155 RCW; repealing RCW 70.155.060 and  
5 82.24.270; and prescribing penalties.

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

7 **Sec. 1.** RCW 70.155.010 and 1993 c 507 s 2 are each amended to read  
8 as follows:

9 The definitions set forth in RCW 82.24.010 shall apply to RCW  
10 70.155.020 through 70.155.130. In addition, for the purposes of this  
11 chapter, unless otherwise required by the context:

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

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

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

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

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

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

5       ~~(7)) "Package" or "container" means a package or container that~~  
6 ~~holds twenty or more cigarettes.~~

7       (4) "Tobacco product" means a product that contains tobacco and is  
8 intended for human consumption and as further defined in RCW  
9 82.26.010(1).

10       **Sec. 2.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to read  
11 as follows:

12       (1) No person shall sell or permit to be sold any tobacco product  
13 through any device that mechanically dispenses tobacco products unless  
14 the device is located fully within premises from which minors are  
15 prohibited or in industrial worksites where minors are not employed and  
16 not less than ten feet from all entrance or exit ways to and from each  
17 premise. The board shall adopt rules that allow an exception to the  
18 requirement that a device be located not less than ten feet from all  
19 entrance or exit ways to and from a premise if it is architecturally  
20 impractical for the device to be located not less than ten feet from  
21 all entrance and exit ways.

22       (2) Self-service displays of tobacco products are prohibited. All  
23 tobacco products must be sold from behind the counter.

24       (3) All retail sales of cigarettes or chewing tobacco must be in-  
25 person transactions in a retail store, except for vending machine sales  
26 at authorized locations as authorized in subsection (1) of this  
27 section. Mail order sales or deliveries of cigarettes or smokeless  
28 tobacco are prohibited.

29       (4) There shall be no poster, billboard, or other display  
30 advertisement of cigarettes or tobacco products in any wholly or  
31 partially state-owned or state-funded location. Further, there shall  
32 be no fixed outdoor tobacco advertising or promotion within a one-mile  
33 radius of all schools and playgrounds.

34       **Sec. 3.** RCW 70.155.040 and 1993 c 507 s 5 are each amended to read  
35 as follows:

36       (1) No person shall sell or permit to be sold single cigarettes  
37 ~~((not))~~. All cigarettes must be sold in ((the)) original, unopened

1 packages or containers to which the stamps required by RCW 82.24.060  
2 have been affixed.

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

6 **Sec. 4.** RCW 70.155.050 and 1993 c 507 s 6 are each amended to read  
7 as follows:

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

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

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

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

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

28 **Sec. 5.** RCW 70.155.100 and 1993 c 507 s 11 are each amended to  
29 read as follows:

30 (1) The liquor control board may suspend or revoke a retailer's  
31 license held by a business at any location, or may impose a monetary  
32 penalty as set forth in subsection (2) of this section, if the liquor  
33 control board finds that the licensee has violated RCW  
34 26.28.080(~~((4))~~), or 70.155.020, 70.155.030, 70.155.040, (~~(70.155.050,~~  
35 ~~70.155.060,~~) 70.155.070, or 70.155.090.

36 (2) The sanctions that the liquor control board may impose against  
37 a person licensed under RCW 82.24.530 (~~(and 70.155.050 and 70.155.060)~~)

1 based upon one or more findings under subsection (1) of this section  
2 may not be less than or exceed the following:

3 (a) For violation of RCW 26.28.080(~~((+4))~~) or 70.155.020:

4 (i) A monetary penalty of not less than one hundred dollars and not  
5 more than two hundred fifty dollars for the first violation within any  
6 two-year period, however, the board may modify the penalty based on  
7 aggravating or mitigating circumstances;

8 (ii) A monetary penalty of not less than three hundred dollars and  
9 not more than five hundred dollars for the second violation within any  
10 two-year period;

11 (iii) A monetary penalty of not less than one thousand dollars and  
12 not more than one thousand five hundred dollars and suspension of the  
13 license for a period of six months for the third violation within any  
14 two-year period;

15 (iv) A monetary penalty of not less than one thousand five hundred  
16 dollars and not more than two thousand five hundred dollars and  
17 suspension of the license for a period of twelve months for the fourth  
18 violation within any two-year period;

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

22 (b) For violations of RCW 70.155.030, a monetary penalty (~~(in the~~  
23 ~~amount))~~) of not less than one hundred dollars and not more than two  
24 hundred fifty dollars for each day upon which such violation occurred;

25 (c) For violations of RCW 70.155.040 occurring on the licensed  
26 premises:

27 (i) A monetary penalty of not less than one hundred dollars and not  
28 more than two hundred fifty dollars for the first violation within any  
29 two-year period, however, the board may modify the penalty based on  
30 aggravating or mitigating circumstances;

31 (ii) A monetary penalty of not less than three hundred dollars and  
32 not more than five hundred dollars for the second violation within any  
33 two-year period;

34 (iii) A monetary penalty of not less than one thousand dollars and  
35 not more than one thousand five hundred dollars and suspension of the  
36 license for a period of six months for the third violation within any  
37 two-year period;

38 (iv) A monetary penalty of not less than one thousand five hundred  
39 dollars and not more than two thousand five hundred dollars and

1 suspension of the license for a period of twelve months for the fourth  
2 violation within any two-year period;

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

6 (d) For violations of RCW 70.155.050 (~~and 70.155.060~~), a monetary  
7 penalty (~~in the amount~~) of not less than three hundred dollars and  
8 not more than five hundred dollars for each violation;

9 (e) For violations of RCW 70.155.070, a monetary penalty (~~in the~~  
10 ~~amount~~) of not less than one thousand dollars and not more than two  
11 thousand five hundred dollars for each violation.

12 (3) The liquor control board may impose a monetary penalty upon any  
13 person other than a licensed (~~cigarette~~) tobacco retailer (~~or~~  
14 ~~licensed sampler~~) if the liquor control board finds that the person  
15 has violated RCW 26.28.080(~~(+4)~~), or 70.155.020, 70.155.030,  
16 70.155.040, (~~70.155.050, 70.155.060,~~) 70.155.070, or 70.155.090.

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

20 (a) For violation of RCW 26.28.080(~~(+4)~~) or 70.155.020, not less  
21 than fifty dollars and not more than one hundred dollars for the first  
22 violation and not less than one hundred dollars and not more than two  
23 hundred fifty dollars for each subsequent violation;

24 (b) For violations of RCW 70.155.030, not less than one hundred  
25 dollars and not more than two hundred fifty dollars for each day upon  
26 which such violation occurred;

27 (c) For violations of RCW 70.155.040, not less than one hundred  
28 dollars and not more than two hundred fifty dollars for each violation;

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

31 ~~(e))~~ For violations of RCW 70.155.070, not less than one thousand  
32 dollars and not more than two thousand five hundred dollars for each  
33 violation.

34 (5) The liquor control board may impose sanctions against a person  
35 licensed under RCW 82.24.500 and 82.24.530 or this chapter for  
36 violations of rules strictly necessary to enforce this chapter and for  
37 which a statutory penalty is not proscribed in an amount of:

38 (a) A monetary penalty of not less than one hundred dollars and not  
39 more than two hundred fifty dollars for the first violation within any

1 two-year period, however, the board may modify the penalty based on  
2 aggravating or mitigating circumstances;

3 (b) A monetary penalty of not less than three hundred dollars and  
4 not more than five hundred dollars for the second violation within any  
5 two-year period; and

6 (c) A monetary penalty of not less than one thousand dollars and  
7 not more than two thousand five hundred dollars or suspension of the  
8 license privilege for a period not to exceed one year, or both, for a  
9 third or any subsequent violation within any two-year period.

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

13 ~~((+6))~~ (7) The liquor control board may issue a cease and desist  
14 order to any person who is found by the liquor control board to have  
15 violated or intending to violate the provisions of this chapter, RCW  
16 26.28.080(~~((+4))~~) or 82.24.500, requiring such person to cease specified  
17 conduct that is in violation. The issuance of a cease and desist order  
18 shall not preclude the imposition of other sanctions authorized by this  
19 statute or any other provision of law.

20 ~~((+7))~~ (8) The liquor control board may seek injunctive relief to  
21 enforce the provisions of RCW 26.28.080(~~((+4))~~) or 82.24.500 or this  
22 chapter. The liquor control board may initiate legal action to collect  
23 civil penalties imposed under this chapter if the same have not been  
24 paid within thirty days after imposition of such penalties. In any  
25 action filed by the liquor control board under this chapter, the court  
26 may, in addition to any other relief, award the liquor control board  
27 reasonable attorneys' fees and costs.

28 ~~((+8))~~ (9) All proceedings under subsections (1) through (~~((+6))~~)  
29 (7) of this section shall be conducted in accordance with chapter 34.05  
30 RCW.

31 **Sec. 6.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
32 read as follows:

33 (1) The liquor control board shall, in addition to the board's  
34 other powers and authorities, have the authority to enforce the  
35 provisions of this chapter and RCW 26.28.080(~~((+4))~~) and 82.24.500. The  
36 liquor control board shall have full power to revoke or suspend the  
37 license of any retailer or wholesaler in accordance with the provisions  
38 of RCW 70.155.100.

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

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

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

19 (5) The liquor control board is authorized under chapter ..., Laws  
20 of 1997 (this act) to adopt only those rules necessary to implement  
21 this chapter and RCW 26.28.080, 82.24.500, and 82.24.530 relating to  
22 the enforcement of provisions regarding distribution of tobacco  
23 products, especially relating to minors.

24 (6) No person may knowingly or willfully resist or oppose any  
25 state, county, or municipal peace officer, or liquor enforcement  
26 officer, in the discharge of his or her duties under this chapter, or  
27 aid and abet such resistance or opposition. A violation of this  
28 subsection is a misdemeanor.

29 **Sec. 7.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to  
30 read as follows:

31 ~~((This chapter preempts political subdivisions from adopting or~~  
32 ~~enforcing requirements for the licensure and regulation of tobacco~~  
33 ~~product promotions and sales within retail stores, except that~~  
34 ~~political subdivisions that have adopted ordinances prohibiting~~  
35 ~~sampling by January 1, 1993, may continue to enforce these ordinances.~~  
36 ~~No political subdivision may: (1) Impose fees or license requirements~~  
37 ~~on retail businesses for possessing or selling cigarettes or tobacco~~  
38 ~~products, other than general business taxes or license fees not~~

1 ~~primarily levied on tobacco products; or (2) regulate or prohibit~~  
2 ~~activities covered by RCW 70.155.020 through 70.155.080.))~~ This  
3 chapter does not ~~((otherwise preempt political subdivisions from~~  
4 ~~adopting ordinances regulating the sale, purchase, use, or promotion of~~  
5 ~~tobacco products not inconsistent with chapter 507, Laws of 1993))~~  
6 supersede local regulation that is at least as restrictive as the  
7 provisions of this chapter.

8       **Sec. 8.** RCW 82.24.500 and 1986 c 321 s 4 are each amended to read  
9 as follows:

10       (1) No person may engage in or conduct the business of purchasing,  
11 selling, consigning, or distributing cigarettes or tobacco products in  
12 this state without a license under this chapter.

13       (2) Possession of cigarettes or tobacco products without a license  
14 with intent to sell is a violation of this section.

15       (3) A person whose license has been suspended or revoked shall not  
16 sell cigarettes or tobacco products or permit cigarettes or tobacco  
17 products to be sold during the period of such suspension or revocation  
18 on the premises.

19       (4) A violation of this section is a misdemeanor.

20       **Sec. 9.** RCW 82.24.550 and 1993 c 507 s 17 are each amended to read  
21 as follows:

22       (1) The department of revenue shall enforce the provisions of this  
23 chapter except RCW 82.24.500, which will be enforced by the liquor  
24 control board. The department of revenue may adopt, amend, and repeal  
25 rules necessary to enforce and administer the provisions of this  
26 chapter. The department of revenue has full power and authority to  
27 revoke or suspend the license or permit of any wholesale or retail  
28 ~~((cigarette))~~ tobacco dealer in the state upon sufficient cause  
29 appearing of the violation of this chapter or upon the failure of such  
30 licensee to comply with any of the provisions of this chapter.

31       (2) A license shall not be suspended or revoked except upon notice  
32 to the licensee and after a hearing as prescribed by the department of  
33 revenue. The department of revenue, upon a finding by same, that the  
34 licensee has failed to comply with any provision of this chapter or any  
35 rule promulgated thereunder, shall, in the case of the first offender,  
36 suspend the license or licenses of the licensee for a period of not  
37 less than thirty consecutive business days, and, in the case of a



1 second or plural offender, shall suspend the license or licenses for a  
2 period of not less than ninety consecutive business days nor more than  
3 twelve months, and, in the event the department of revenue finds the  
4 offender has been guilty of willful and persistent violations, it may  
5 revoke the license or licenses.

6 (3) Any person whose license or licenses have been so revoked may  
7 apply to the department of revenue at the expiration of one year for a  
8 reinstatement of the license or licenses. The license or licenses may  
9 be reinstated by the department of revenue if it appears to the  
10 satisfaction of the department of revenue that the licensee will comply  
11 with the provisions of this chapter and the rules promulgated  
12 thereunder.

13 (4) A person whose license has been suspended or revoked shall not  
14 sell cigarettes or tobacco products or permit cigarettes or tobacco  
15 products to be sold during the period of such suspension or revocation  
16 on the premises occupied by the person or upon other premises  
17 controlled by the person or others or in any other manner or form  
18 whatever.

19 (5) Any determination and order by the department of revenue, and  
20 any order of suspension or revocation by the department of revenue of  
21 the license or licenses, or refusal to reinstate a license or licenses  
22 after revocation shall be reviewable by an appeal to the superior court  
23 of Thurston county. The superior court shall review the order or  
24 ruling of the department of revenue and may hear the matter de novo,  
25 having due regard to the provisions of this chapter and the duties  
26 imposed upon the department of revenue.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.155  
28 RCW to read as follows:

29 No tobacco manufacturer, wholesaler, or agent thereof, may pay the  
30 monetary penalty of a tobacco retailer licensed under Title 82 RCW, nor  
31 may a tobacco retailer licensed under Title 82 RCW accept moneys for  
32 payment of a monetary penalty from a tobacco manufacturer, wholesaler,  
33 or agent thereof. A violation of this section is a gross misdemeanor  
34 punishable by a minimum fine of two thousand five hundred dollars for  
35 the first offense and five thousand dollars for each offense  
36 thereafter.

1        NEW SECTION.    **Sec. 11.**    The following acts or parts of acts are  
2 each repealed:

3        (1) RCW 70.155.060 and 1993 c 507 s 7; and

4        (2) RCW 82.24.270 and 1996 c 149 s 9 & 1995 c 278 s 12.

5        NEW SECTION.    **Sec. 12.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

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