
SENATE BILL 5792

State of Washington

55th Legislature

1997 Regular Session

By Senators Oke, Heavey, Winsley, Fraser, Patterson, Franklin and Kohl;
by request of Governor Locke and Attorney General

Read first time 02/12/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to regulation and control of tobacco products;
2 amending RCW 70.155.010, 70.155.020, 70.155.030, 70.155.040,
3 70.155.050, 70.155.090, 70.155.100, 70.155.110, 70.155.130, 82.24.500,
4 and 82.26.050; adding a new section to chapter 70.155 RCW; repealing
5 RCW 70.155.060 and 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
18 the 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))~~ (4) "Sampling" means the distribution of samples to members
4 of the ~~((general))~~ public ~~((in a public place))~~.

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

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

10 **Sec. 2.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to read
11 as follows:

12 A person who holds a license issued under RCW ~~((82.24.520))~~
13 82.24.510(1)(b) or 82.24.530 shall:

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

16 (2) Display a sign concerning the prohibition of tobacco sales to
17 minors.

18 Such sign shall:

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

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

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

26 **Sec. 3.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to read
27 as follows:

28 (1) No person shall sell or permit to be sold any tobacco product
29 through any device that mechanically dispenses tobacco products unless
30 the device is located fully within premises from which minors are
31 prohibited or in industrial worksites where minors are not employed and
32 not less than ten feet from all entrance or exit ways to and from each
33 premise. The board shall adopt rules that allow an exception to the
34 requirement that a device be located not less than ten feet from all
35 entrance or exit ways to and from a premise if it is architecturally
36 impractical for the device to be located not less than ten feet from
37 all entrance and exit ways.

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

3 (3) Fixed outdoor advertising of tobacco products is prohibited
4 within one thousand feet of the perimeter of any public or private
5 primary, middle, or secondary school or governmentally owned or
6 operated playground. As used in this section, "playground" means an
7 area provided in whole or in part for recreation by minors, and
8 includes but is not limited to, areas that provide ball fields or
9 courts, trails, playground equipment, or swimming pools for public use.

10 **Sec. 4.** RCW 70.155.040 and 1993 c 507 s 5 are each amended to read
11 as follows:

12 (1) No person shall sell or permit to be sold single cigarettes
13 ((not)). All cigarettes must be sold in ((the)) original, unopened
14 packages or containers to which the stamps required by RCW 82.24.060
15 have been affixed.

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

19 **Sec. 5.** RCW 70.155.050 and 1993 c 507 s 6 are each amended to read
20 as follows:

21 (1) No person may engage in the business of sampling tobacco
22 products within the state ((unless licensed to do so by the board. If
23 a firm contracts with a manufacturer to distribute samples of the
24 manufacturer's products, that firm is deemed to be the person engaged
25 in the business of sampling)).

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

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

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

36 (5) A sampler's license entitles the licensee, and employees or
37 agents of the licensee, to distribute samples at any lawful location in

1 ~~the state during the term of the license. A person engaged in sampling~~
2 ~~under the license shall carry the license or a copy at all times)) A~~
3 violation of this section is a misdemeanor.

4 **Sec. 6.** RCW 70.155.090 and 1993 c 507 s 10 are each amended to
5 read as follows:

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

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

24 **Sec. 7.** RCW 70.155.100 and 1993 c 507 s 11 are each amended to
25 read as follows:

26 (1) The liquor control board may suspend or revoke a retailer's
27 license issued under RCW 82.24.510(1)(b) held by a business at any
28 location, or may impose a monetary penalty as set forth in subsection
29 (2) of this section, if the liquor control board finds that the
30 licensee has violated RCW 26.28.080(~~(+4)~~), or 70.155.020, 70.155.030,
31 70.155.040, (~~(70.155.050, 70.155.060,)~~) 70.155.070, or 70.155.090.

32 (2) The sanctions that the liquor control board may impose against
33 a person licensed under RCW 82.24.530 (~~(and 70.155.050 and 70.155.060)~~)
34 based upon one or more findings under subsection (1) of this section
35 may not be less than or exceed the following:

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

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

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

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

12 (iv) A monetary penalty of not less than one thousand five hundred
13 dollars and not more than two 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 RCW 70.155.030, a monetary penalty (~~in the~~
20 ~~amount~~) of not less than one hundred dollars and not more than two
21 hundred fifty dollars for each day upon which such violation occurred;

22 (c) For violations of RCW 70.155.040 occurring on the licensed
23 premises:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (e)) For violations of RCW 70.155.070, not less than one thousand
29 dollars and not more than two thousand five hundred dollars for each
30 violation.

31 (5) The liquor control board may impose sanctions against a person
32 licensed under RCW 82.24.510(1)(b) or 82.24.530 for violations of rules
33 strictly necessary to enforce this chapter and for which a statutory
34 penalty is not proscribed in an amount of:

35 (a) A monetary penalty of not less than one hundred dollars and not
36 more than two hundred fifty dollars for the first violation within any
37 two-year period, however, the board may modify the penalty based on
38 aggravating or mitigating circumstances;

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

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

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

11 ((+6)) (7) The liquor control board may issue a cease and desist
12 order to any person who is found by the liquor control board to have
13 violated or intending to violate the provisions of this chapter, RCW
14 26.28.080((+4)) or 82.24.500, requiring such person to cease specified
15 conduct that is in violation. The issuance of a cease and desist order
16 shall not preclude the imposition of other sanctions authorized by this
17 statute or any other provision of law.

18 ((+7)) (8) The liquor control board may seek injunctive relief to
19 enforce the provisions of RCW 26.28.080((+4)) or 82.24.500 or this
20 chapter. The liquor control board may initiate legal action to collect
21 civil penalties imposed under this chapter if the same have not been
22 paid within thirty days after imposition of such penalties. In any
23 action filed by the liquor control board under this chapter, the court
24 may, in addition to any other relief, award the liquor control board
25 reasonable attorneys' fees and costs.

26 ((+8)) (9) All proceedings under subsections (1) through ((+6))
27 (7) of this section shall be conducted in accordance with chapter 34.05
28 RCW.

29 **Sec. 8.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
30 read as follows:

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

37 (2) The liquor control board and the board's authorized agents or
38 employees shall have full power and authority to enter any place of

1 business where tobacco products are sold for the purpose of enforcing
2 the provisions of this chapter.

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

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

17 (5) The liquor control board is authorized under chapter . . . , Laws
18 of 1997 (this act) to adopt only those rules necessary to implement
19 this chapter and RCW 26.28.080, 82.24.500, 82.24.510, and 82.24.530
20 relating to the enforcement of provisions regarding distribution of
21 tobacco products, especially relating to minors.

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

27 **Sec. 9.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to
28 read as follows:

29 ~~((This chapter preempts political subdivisions from adopting or~~
30 ~~enforcing requirements for the licensure and regulation of tobacco~~
31 ~~product promotions and sales within retail stores, except that~~
32 ~~political subdivisions that have adopted ordinances prohibiting~~
33 ~~sampling by January 1, 1993, may continue to enforce these ordinances.~~
34 ~~No political subdivision may: (1) Impose fees or license requirements~~
35 ~~on retail businesses for possessing or selling cigarettes or tobacco~~
36 ~~products, other than general business taxes or license fees not~~
37 ~~primarily levied on tobacco products; or (2) regulate or prohibit~~
38 ~~activities covered by RCW 70.155.020 through 70.155.080.)) This~~

1 chapter does not (~~otherwise preempt political subdivisions from~~
2 ~~adopting ordinances regulating the sale, purchase, use, or promotion of~~
3 ~~tobacco products not inconsistent with chapter 507, Laws of 1993~~)
4 supersede local regulation that is at least as restrictive as the
5 provisions of this chapter.

6 **Sec. 10.** RCW 82.24.500 and 1986 c 321 s 4 are each amended to read
7 as follows:

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

11 (2) Possession of cigarettes without a license with intent to sell
12 is a violation of this section.

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

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

18 **Sec. 11.** RCW 82.26.050 and 1975 1st ex.s. c 278 s 72 are each
19 amended to read as follows:

20 From and after July 1, 1959 no person shall engage in the business
21 of a distributor or subjobber of tobacco products at any place of
22 business without first having received from the department of revenue
23 a certificate of registration as provided in RCW 82.32.030.

24 A person whose cigarette retailer license has been suspended or
25 revoked shall not sell cigarettes or tobacco products or permit
26 cigarettes or tobacco products to be sold on the premises during the
27 period of such suspension or revocation.

28 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.155
29 RCW to read as follows:

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

1 the first offense and five thousand dollars for each offense
2 thereafter.

3 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
4 each repealed:

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

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

7 NEW SECTION. **Sec. 14.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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