

HOUSE BILL REPORT

SHB 2027

As Amended by the Senate

Title: An act relating to seizing, shipping, and delivery of cigarettes through internet, telephonic, or other delivery services.

Brief Description: Regulating the sale of cigarettes.

Sponsors: By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Kirby, Delvin, Morris, DeBolt and Sullivan).

Brief History:

Committee Activity:

Technology, Telecommunications & Energy: 2/28/03, 3/4/03 [DPS].

Floor Activity:

Passed House: 3/13/03, 96-0.

Senate Amended.

Passed Senate: 4/10/03, 49-0.

Brief Summary of Substitute Bill

- Establishes requirements for the delivery of cigarettes ordered by telephone, mail, or the internet.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Anderson, Blake, Bush, Delvin, Hudgins, Kirby, McMahan, Romero, Tom, Wallace and Wood.

Staff: Matt Cooper (786-7106).

Background:

The federal Jenkins Act requires interstate shippers of cigarettes to notify a state monthly of the company's intent to ship cigarettes into that state. The Department of Revenue (Department) is the agency designated to receive this notice for Washington.

The Liquor Control Board (Board) administers current tobacco regulation and taxation. Washington law imposes excise (\$1.425/pack) and sales taxes (6.5 percent state tax, plus up to 2 percent local sales tax) on cigarettes, and requires sellers to place tax stamps on cigarettes to indicate the excise tax has been paid.

The state Minors' Access to Tobacco Products Act (Act), limits youth access to tobacco products and is administered by the Board. The Act requires warnings that tobacco sales to anyone under age 18 are illegal, imposes restrictions on free samples of tobacco products, and restricts the placement of tobacco vending machines.

State law makes selling or giving cigarettes to anyone in Washington under the age of 18 a misdemeanor. There are also separate provisions for civil penalties for businesses who sell tobacco to minors.

Summary of Substitute Bill:

Delivery sales are orders for cigarettes taken by telephone, mail, or the internet delivered by delivery service. Anyone making delivery sales of cigarettes must ensure that no sales are made to persons under the age of 18 and comply with notice, delivery, and tax requirements.

Anyone offering delivery sales of cigarettes must register with the Board. Sellers must provide the Board with their business name and address and must file a disclosure statement with the Board each month. This disclosure statement must list each person that has received a delivery sale of cigarettes, along with the amount and product purchased.

When a purchaser places an order for a delivery sale of cigarettes, the seller must verify the age of the purchaser either by photocopy of the purchaser's identification, or through a commercial database. The seller must then mail or e-mail the purchaser a disclosure that contains the federal tobacco warning, a warning that sales to minors are unlawful, and a statement that cigarettes are taxable.

Sellers must use a private delivery service which will ensure that cigarettes are not delivered to anyone under age 18.

Cigarettes seized under this Act will be disposed of under current state law.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment establishes criminal penalties related to delivery sales of cigarettes. Shipping cigarettes without first obtaining proof of age is a class C felony. A

second or subsequent offense is a class B felony. Any delivery service that delivers cigarettes without first verifying the age and identity of the recipient of a delivery sale is guilty of a gross misdemeanor. The amendment also applies the criminal profiteering act to unlawful delivery sales of cigarettes.

Appropriation: None.

Fiscal Note: Requested on February 27, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill will allow the State of Washington to exercise control over internet cigarette sales made to Washington citizens. Right now there are internet sites advertising that they will sell cigarettes tax-free and without any proof of age. This allows minors to easily purchase cigarettes on the internet. Internet businesses are selling cigarettes without paying state cigarette taxes.

The citizens need this bill to prevent underage cigarette use. The state needs this bill to ensure that minor's access to cigarettes is limited and that proper taxes are collected on cigarette sales. Small retailers need this bill to level the playing field. They can't compete with an internet business that doesn't pay the state cigarette tax.

The tobacco industry, convenience stores, the Department, and the Board all agree that this policy is a good one. They also all agree that the act should be included in RCW 70.155 and administered by the Board.

The Department is currently not responsible for any enforcement duties. The bill as it is written would force the Department into the enforcement field. The Board is already in the tobacco enforcement field. It would be more efficient for the Board to conduct the enforcement of delivery sales.

Testimony Against: None.

Testified: Representative Kirby, prime sponsor; Anne Solwick, Department of Revenue; T.K. Bentler, Washington Association of Neighborhood Stores; and Joe Daniels, Phillip Morris.