
SENATE BILL 5597

State of Washington

58th Legislature

2003 Regular Session

By Senators Oke, T. Sheldon, Swecker, Thibaudeau, Carlson, Shin, Winsley, Spanel, Kline, Regala, Haugen, Jacobsen, Poulsen, B. Sheldon, Stevens, Keiser, Kohl-Welles and Rasmussen

Read first time 01/31/2003. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to protecting the health of minors by prohibiting
2 tobacco product sampling; amending RCW 70.155.010, 70.155.050,
3 70.155.090, 70.155.100, 82.24.120, and 82.24.230; creating a new
4 section; repealing RCW 70.155.060 and 82.24.270; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that tobacco use
8 among children is a serious and preventable health problem. Every day
9 sixty-five more children in Washington state become smokers, and every
10 year more than eight thousand two hundred state residents die from
11 tobacco-related illnesses. The legislature further finds that tobacco
12 samples contribute to children's access to tobacco products by
13 providing a no-cost initiation that encourages minors to experiment
14 with nicotine at early ages. Sampling activity often occurs in venues
15 frequented by minors, and tobacco samples are distributed along with
16 other promotional items that contain tobacco brand logos, thus
17 increasing the appeal of the tobacco products as well as the chances
18 that children will obtain them. Sampling events in this state have
19 increased twenty-fold over the past nine years, and nationwide, tobacco

1 industry spending on samples has increased significantly. It is
2 therefore the intent of the legislature to protect minors from the
3 influence of tobacco sampling by eliminating the distribution of
4 samples in this state.

5 **Sec. 2.** RCW 70.155.010 and 1993 c 507 s 2 are each amended to read
6 as follows:

7 The definitions set forth in RCW 82.24.010 shall apply to RCW
8 70.155.020 through 70.155.130. In addition, for the purposes of this
9 chapter, unless otherwise required by the context:

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

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

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

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

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

20 ~~(6))~~ (4) "Sampling" means the distribution of samples to members
21 of the ~~((general))~~ public ~~((in a public place))~~.

22 ~~((7))~~ (5) "Tobacco product" means a product that contains tobacco
23 and is intended for human ~~((consumption))~~ use, including any product
24 defined in RCW 82.24.010(2) or 82.26.010(1).

25 **Sec. 3.** RCW 70.155.050 and 1993 c 507 s 6 are each amended to read
26 as follows:

27 (1) No person may engage in the business of sampling ~~((within the~~
28 ~~state unless licensed to do so by the board. If a firm contracts with~~
29 ~~a manufacturer to distribute samples of the manufacturer's products,~~
30 ~~that firm is deemed to be the person engaged in the business of~~
31 ~~sampling))~~ tobacco products.

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

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

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

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

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

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

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

31 **Sec. 5.** RCW 70.155.100 and 1998 c 133 s 3 are each amended to read
32 as follows:

33 (1) The liquor control board may suspend or revoke a retailer's
34 license issued under RCW 82.24.510(1)(b) held by a business at any
35 location, or may impose a monetary penalty as set forth in subsection

1 (2) of this section, if the liquor control board finds that the
2 licensee has violated RCW 26.28.080, 70.155.020, 70.155.030,
3 70.155.040, 70.155.050, (~~70.155.060,~~) 70.155.070, or 70.155.090.

4 (2) The sanctions that the liquor control board may impose against
5 a person licensed under RCW 82.24.530 (~~and 70.155.050 and 70.155.060~~)
6 based upon one or more findings under subsection (1) of this section
7 may not exceed the following:

8 (a) For violation of RCW 26.28.080 or 70.155.020:

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

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

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

16 (iv) A monetary penalty of one 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 one hundred dollars for each day upon which such violation
24 occurred;

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

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

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

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

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

37 (v) Revocation of the license with no possibility of reinstatement

1 for a period of five years for the fifth or more violation within any
2 two-year period;

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

5 (e) For violations of RCW 70.155.070, a monetary penalty in the
6 amount of one thousand dollars for each violation.

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

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

15 (a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for
16 the first violation and one hundred dollars for each subsequent
17 violation;

18 (b) For violations of RCW 70.155.030, one hundred dollars for each
19 day upon which such violation occurred;

20 (c) For violations of RCW 70.155.040, one hundred dollars for each
21 violation;

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

24 (e) For violations of RCW 70.155.070, one thousand dollars for each
25 violation.

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

29 (6) The liquor control board may issue a cease and desist order to
30 any person who is found by the liquor control board to have violated or
31 intending to violate the provisions of this chapter, RCW 26.28.080 or
32 82.24.500, requiring such person to cease specified conduct that is in
33 violation. The issuance of a cease and desist order shall not preclude
34 the imposition of other sanctions authorized by this statute or any
35 other provision of law.

36 (7) The liquor control board may seek injunctive relief to enforce
37 the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The
38 liquor control board may initiate legal action to collect civil

1 penalties imposed under this chapter if the same have not been paid
2 within thirty days after imposition of such penalties. In any action
3 filed by the liquor control board under this chapter, the court may, in
4 addition to any other relief, award the liquor control board reasonable
5 attorneys' fees and costs.

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

8 (9) The liquor control board may reduce or waive either the
9 penalties or the suspension or revocation of a license, or both, as set
10 forth in this chapter where the elements of proof are inadequate or
11 where there are mitigating circumstances. Mitigating circumstances may
12 include, but are not limited to, an exercise of due diligence by a
13 retailer. Further, the board may exceed penalties set forth in this
14 chapter based on aggravating circumstances.

15 **Sec. 6.** RCW 82.24.120 and 1996 c 149 s 7 are each amended to read
16 as follows:

17 (1) If any person, subject to the provisions of this chapter or any
18 rules adopted by the department of revenue under authority hereof, is
19 found to have failed to affix the stamps required, or to have them
20 affixed as herein provided, or to pay any tax due hereunder, or to have
21 violated any of the provisions of this chapter or rules adopted by the
22 department of revenue in the administration hereof, there shall be
23 assessed and collected from such person, in addition to any tax that
24 may be found due, a remedial penalty equal to the greater of ten
25 dollars per package of unstamped cigarettes or two hundred fifty
26 dollars, plus interest on the amount of the tax at the rate as computed
27 under RCW 82.32.050(2) from the date the tax became due until the date
28 of payment, and upon notice mailed to the last known address of the
29 person. The amount shall become due and payable in thirty days from
30 the date of the notice. If the amount remains unpaid, the department
31 or its duly authorized agent may make immediate demand upon such person
32 for the payment of all such taxes, penalties, and interest.

33 (2) The department, for good reason shown, may waive or cancel all
34 or any part of penalties imposed, but the taxpayer must pay all taxes
35 due and interest thereon, at the rate as computed under RCW
36 82.32.050(2) from the date the tax became due until the date of
37 payment.

1 (3) The keeping of any unstamped articles coming within the
2 provisions of this chapter shall be prima facie evidence of intent to
3 violate the provisions of this chapter.

4 (4) This section does not apply to taxes or tax increases due under
5 RCW ((~~82.24.270~~ and)) 82.24.280.

6 **Sec. 7.** RCW 82.24.230 and 1995 c 278 s 9 are each amended to read
7 as follows:

8 All of the provisions contained in chapter 82.32 RCW shall have
9 full force and application with respect to taxes imposed under the
10 provisions of this chapter, except the following sections: RCW
11 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as
12 noted otherwise in RCW ((~~82.24.270~~ and)) 82.24.280.

13 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
14 repealed:

15 (1) RCW 70.155.060 (Sampling in public places) and 1993 c 507 s 7;
16 and

17 (2) RCW 82.24.270 (Cigarettes given away--Stamp not required--
18 Payment of tax--Interest--Payment of amount less than due--Penalties--
19 Administration) and 1996 c 149 s 9 & 1995 c 278 s 12.

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