
SUBSTITUTE SENATE BILL 5926

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Technology & Communications (originally sponsored by Senators Esser, Poulsen, Schmidt, Eide, Finkbeiner and Oke)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to seizing, shipping, and delivery of cigarettes
2 through internet, telephonic, or other delivery services; amending RCW
3 70.155.010; adding a new section to chapter 70.155 RCW; and prescribing
4 penalties.

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

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

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

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

12 (2) "Delivery sale" means any sale of cigarettes to a consumer in
13 the state where either: (a) The purchaser submits an order for a sale
14 by means of a telephonic or other method of voice transmission, mail
15 delivery, any other delivery service, or the internet or other online
16 service; or (b) the cigarettes are delivered by use of mail delivery or
17 any other delivery service. A sale of cigarettes shall be a delivery
18 sale regardless of whether the seller is located within or without the

1 state. A sale of cigarettes not for personal consumption to a person
2 who is a wholesaler licensed pursuant to chapter 82.24 RCW or a
3 retailer pursuant to chapter 82.24 RCW is not a delivery sale.

4 (3) "Delivery service" means any private carrier engaged in the
5 commercial delivery of letters, packages, or other containers that
6 requires the recipient of that letter, package, or container to sign to
7 accept delivery.

8 (4) "Minor" refers to an individual who is less than eighteen years
9 old.

10 ~~((3))~~ (5) "Public place" means a public street, sidewalk, or
11 park, or any area open to the public in a publicly owned and operated
12 building.

13 ~~((4))~~ (6) "Sample" means a tobacco product distributed to members
14 of the general public at no cost or at nominal cost for product
15 promotion purposes.

16 ~~((5))~~ (7) "Sampler" means a person engaged in the business of
17 sampling other than a retailer.

18 ~~((6))~~ (8) "Sampling" means the distribution of samples to members
19 of the general public in a public place.

20 ~~((7))~~ (9) "Shipping container" means a container in which
21 cigarettes are shipped in connection with a delivery sale.

22 (10) "Shipping documents" means bills of lading, airbills, or any
23 other documents used to evidence the undertaking by a delivery service
24 to deliver letters, packages, or other containers.

25 (11) "Tobacco product" means a product that contains tobacco and is
26 intended for human consumption.

27 **NEW SECTION. Sec. 2.** A new section is added to chapter 70.155 RCW
28 to read as follows:

29 (1) It is the responsibility of the person who mails, ships, or
30 otherwise delivers cigarettes before the first delivery sale of
31 cigarettes to:

32 (a) Verify the age of the receiver of the cigarettes upon delivery;
33 and

34 (b) Obtain in writing verification of the receiver's address and
35 that the receiver of the cigarettes is not a minor. The statement must
36 also confirm if the prospective consumer understands: (i) That signing
37 another person's name to the certification is a violation of RCW

1 9A.60.040 (1)(a); (ii) that the sale of cigarettes to a minor is a
2 violation of RCW 26.28.080; (iii) that the purchase of cigarettes by
3 minors is a violation of RCW 70.155.080; and (iv) that he or she has
4 the option to receive mailings from a tobacco company about tobacco
5 products.

6 (2) No person shall mail, ship, or otherwise deliver cigarettes in
7 connection with a delivery sale unless before the first delivery sale
8 to the consumer that person:

9 (a) Makes a good faith effort to verify the information contained
10 in the certification provided by the prospective consumer in subsection
11 (1) of this section against a commercially available data base, or
12 obtains a photocopy of an officially issued identification containing
13 the bearer's age, signature, and photograph. The only forms of
14 identification that are acceptable as proof of age for the purchase for
15 tobacco products are: (i) A liquor control authority card of
16 identification issued by a state of the United States or Canada, (ii)
17 a driver's license, instruction permit, or identification card issued
18 by a state of the United States or Province of Canada, (iii) a United
19 States military identification card, (iv) a passport, or (v) a merchant
20 marine identification card issued by the United States coast guard;

21 (b) Provides to the prospective consumer through electronic mail or
22 other means a notice that meets the requirements of subsection (3) of
23 this section;

24 (c) In the case of an order for cigarettes pursuant to an
25 advertisement on the internet, receives payment for the delivery sale
26 from the prospective consumer by a credit card or debit card, or by
27 check that has been issued in the prospective consumer's name.

28 (3) The notice required under subsection (2)(b) of this section
29 must include:

30 (a) A prominent and clearly legible statement that cigarette sales
31 to minors are illegal;

32 (b) A prominent and clearly legible statement that consists of one
33 of the warnings set forth in section 4(a)(1) of the federal cigarette
34 labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a
35 quarterly basis;

36 (c) A prominent and clearly legible statement that sales of
37 cigarettes are restricted to those consumers who provide verifiable
38 proof of age in accordance with subsection (1) of this section; and

1 (d) A prominent and clearly legible statement that cigarette sales
2 are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an
3 explanation of how the tax has been, or is to be, paid with respect to
4 a delivery sale.

5 (4) It is the responsibility of the person who mails, ships, or
6 otherwise delivers cigarettes in connection with a delivery sale to:

7 (a) Include as part of the bill of lading, or other shipping
8 documents, a clear and conspicuous statement that states: "Cigarettes:
9 Washington Law Prohibits Shipping to Individuals Under 18, and Requires
10 the Payment of all Applicable Taxes";

11 (b) Contract only with private carriers who employ delivery agents
12 who will verify the receiver of the cigarettes is not a minor upon
13 delivery. The only forms of identification that are acceptable as
14 proof of age for the purchase for tobacco products are: (i) A liquor
15 control authority card of identification issued by a state of the
16 United States or Canada, (ii) a driver's license, instruction permit,
17 or identification card issued by a state of the United States or
18 Province of Canada, (iii) a United States military identification card,
19 (iv) a passport, or (v) a merchant marine identification card issued by
20 the United States coast guard;

21 (c) Provide to the delivery service retained for the delivery sale
22 evidence of full compliance with subsection (6) of this section.

23 (5)(a) Before making delivery sales or mailings, shipping, or
24 otherwise delivering cigarettes to a Washington address in connection
25 with any sales, any person who mails, ships, or otherwise delivers
26 cigarettes shall file with the board a statement setting forth the
27 person's name, trade name, and the address of the person's principal
28 place of business and any other place of business.

29 (b) Any person who mails, ships, or otherwise delivers cigarettes
30 in connection with a delivery sale shall within fifteen days after the
31 first of each month file with the board a report of all delivery sales
32 made by the person within this state for the preceding month. The
33 report shall show the name and address of the consumer to whom the
34 cigarettes were sold, the kind and quality, and the date of delivery
35 thereof.

36 (6)(a) Any person failing to collect or remit to the department of
37 revenue any tax required under chapter 82.24 RCW in connection with a

1 delivery sale shall be assessed, in addition to any other penalty, a
2 penalty of five times the retail value of the cigarettes involved.

3 (b) Cigarettes sold or attempted to be sold in a delivery sale that
4 do not meet the requirements of this chapter shall be forfeited to the
5 state and destroyed as prescribed in chapter 82.24 RCW.

6 (c) Cigarettes delivered or attempted to be delivered in a delivery
7 sale that do not meet the requirements of this chapter shall be
8 forfeited to the state and destroyed as prescribed in chapter 82.24
9 RCW.

10 (d) All fixtures, equipment, and all other materials and personal
11 property on the premises of any person who, with the intent to defraud
12 the state, violates any of the requirements of this chapter, shall be
13 forfeited to the state as prescribed in chapter 82.24 RCW.

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