
SENATE BILL 5926

State of Washington

58th Legislature

2003 Regular Session

By Senators Esser, Poulsen, Schmidt, Eide, Finkbeiner and Oke

Read first time 02/20/2003. Referred to Committee on Technology & Communications.

1 AN ACT Relating to seizing, shipping, and delivery of cigarettes
2 through internet, telephonic, or other delivery services; adding a new
3 chapter to Title 82 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Adult" means a person who is at least the legal minimum
8 purchase age.

9 (2) "Consumer" means an individual who is not licensed as a
10 wholesale dealer or retail dealer.

11 (3) "Delivery sale" means any sale of cigarettes to a consumer in
12 the state where either: (a) The purchaser submits an order for a sale
13 by means of a telephonic or other method of voice transmission, mail
14 delivery, any other delivery service, or the internet or other on-line
15 service; or (b) the cigarettes are delivered by use of mail delivery or
16 any other delivery service. A sale of cigarettes shall be a delivery
17 sale regardless of whether the seller is located within or without the
18 state. A sale of cigarettes not for personal consumption to a person
19 who is a wholesale dealer or a retail dealer is not a delivery sale.

1 (4) "Delivery service" means any person who is engaged in the
2 commercial delivery of letters, packages, or other containers.

3 (5) "Department" means the department of revenue.

4 (6) "Legal minimum purchase age" is the minimum age at which an
5 individual may legally purchase cigarettes in the state.

6 (7) "Shipping container" means a container in which cigarettes are
7 shipped in connection with a delivery sale.

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

11 NEW SECTION. **Sec. 2.** (1) No person shall make a delivery sale of
12 cigarettes to any individual who is under the legal minimum purchase
13 age.

14 (2) Each person accepting a purchase order for a delivery sale must
15 comply with:

16 (a) The age verification requirements set forth in section 3 of
17 this act;

18 (b) The disclosure requirements set forth in section 4 of this act;

19 (c) The shipping requirements set forth in section 5 of this act;

20 (d) The registration and reporting requirements set forth in
21 section 6 of this act;

22 (e) The tax collection requirements set forth in section 7 of this
23 act; and

24 (f) All other laws of the state generally applicable to sales of
25 cigarettes that occur entirely within the state, including, but not
26 limited to, those laws imposing: (i) Excise taxes; (ii) sales taxes;
27 (iii) license and revenue-stamping requirements; and (iv) escrow
28 payment obligations.

29 NEW SECTION. **Sec. 3.** (1) No person shall mail, ship, or otherwise
30 deliver cigarettes in connection with a delivery sale unless prior to
31 the first delivery sale to the consumer the person:

32 (a) Obtains from the prospective consumer a certification that
33 includes: (i) A reliable confirmation that the consumer is at least
34 the legal minimum purchase age; and (ii) a statement signed by the
35 prospective consumer in writing that certifies the prospective
36 consumer's address and that the consumer is at least eighteen years of

1 age. The statement must also confirm that: (A) The prospective
2 consumer understands that signing another person's name to the
3 certification is illegal; (B) the sale of cigarettes to individuals
4 under the legal minimum purchase age is illegal; (C) the purchase of
5 cigarettes by individuals under the legal minimum purchase age is
6 illegal under the laws of the state; and (D) the prospective consumer
7 wants to receive mailings from a tobacco company;

8 (b) Makes a good faith effort to verify the information contained
9 in the certification provided by the prospective consumer pursuant to
10 (a) of this subsection against a commercially available data base, or
11 obtains a photocopy or other image of the valid, government-issued
12 identification stating the date of birth or age of the individual
13 placing the order;

14 (c) Provides to the prospective consumer, via e-mail or other
15 means, a notice that meets the requirements of section 4 of this act;

16 (d) In the case of an order for cigarettes pursuant to an
17 advertisement on the internet, receives payment for the delivery sale
18 from the prospective consumer by a credit or debit card that has been
19 issued in the consumer's name or by check.

20 (2) Persons accepting purchase orders for delivery sales may
21 request that prospective consumers provide their e-mail addresses.

22 NEW SECTION. **Sec. 4.** The notice required under section 3(1)(c) of
23 this act includes: (1) A prominent and clearly legible statement that
24 cigarette sales to consumers below the legal minimum purchase age are
25 illegal; (2) a prominent and clearly legible statement that consists of
26 one of the warnings set forth in section 4(a)(1) of the federal
27 cigarette labeling and advertising act (15 U.S.C. Sec. 1333(a)(1))
28 rotated on a quarterly basis; (3) a prominent and clearly legible
29 statement that sales of cigarettes are restricted to those consumers
30 who provide verifiable proof of age in accordance with section 3 of
31 this act; and (4) a prominent and clearly legible statement that
32 cigarette sales are subject to tax under chapter 82.24 RCW with an
33 explanation of how the tax has been, or is to be, paid with respect to
34 a delivery sale.

35 NEW SECTION. **Sec. 5.** (1) Each person who mails, ships, or
36 otherwise delivers cigarettes in connection with a delivery sale shall:

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

5 (b) Use a method of mailing, shipping, or delivery that obligates
6 the delivery service to require: (i) The consumer placing the purchase
7 order for the delivery sale, or another adult of legal minimum purchase
8 age, to sign to accept delivery of the shipping container; and (ii)
9 proof, in the form of a valid, government-issued identification bearing
10 a photograph of the individual who signs to accept delivery of the
11 shipping container, demonstrating that he or she is either the
12 addressee or another adult of legal minimum purchase age. However,
13 proof of the legal minimum purchase age shall be required only if the
14 individual appears to be under twenty-seven years of age; and

15 (c) Provide to the delivery service retained for the delivery sale
16 evidence of full compliance with section 7 of this act.

17 (2) If the person accepting a purchase order for a delivery sale
18 delivers the cigarettes without using a delivery service, the person
19 shall comply with all requirements of this chapter applicable to a
20 delivery service and shall be in violation of the provisions of this
21 chapter if he or she fails to comply with any such requirement.

22 NEW SECTION. **Sec. 6.** (1) Prior to making delivery sales or
23 mailing, shipping, or otherwise delivering cigarettes in connection
24 with any sales, every person shall file with the department a statement
25 setting forth the person's name, trade name, and the address of the
26 person's principal place of business and any other place of business.

27 (2) Not later than the tenth day of each calendar month, each
28 person that has made a delivery sale or mailed, shipped, or otherwise
29 delivered cigarettes in connection with any sale during the previous
30 calendar month shall file with the department a memorandum or a copy of
31 the invoice that provides for each and every delivery sale: (a) The
32 name and address of the consumer to whom the delivery sale was made;
33 (b) the brand or brands of the cigarettes that were sold in the
34 delivery sale; and (c) the quantity of cigarettes that were sold in the
35 delivery sale.

36 (3) Any person that satisfies the requirements of 15 U.S.C. Sec.
37 376 is deemed to satisfy the requirements of this section.

1 NEW SECTION. **Sec. 7.** Each person accepting a purchase order for
2 a delivery sale shall collect and remit to the department all cigarette
3 taxes imposed with respect to a delivery sale, except that the
4 collection and remission is not required to the extent the person has
5 obtained proof in the form of the presence of applicable tax stamps or
6 otherwise that taxes have already been paid to the state.

7 NEW SECTION. **Sec. 8.** (1) Except as otherwise provided in this
8 section, a first violation of any provision of this chapter is
9 punishable by a fine of one thousand dollars or five times the retail
10 value of the cigarettes involved, whichever is greater. A second or
11 subsequent violation of any provision of this chapter is punishable by
12 a fine of five thousand dollars or five times the retail value of the
13 cigarettes involved, whichever is greater.

14 (2) Any person who knowingly violates any provision of this
15 chapter, or who knowingly and falsely submits a certification under
16 section 3(1) of this act in another person's name, shall, for each
17 offense, be fined ten thousand dollars or five times the retail value
18 of the cigarettes involved, whichever is greater, or imprisoned not
19 more than five years, or both.

20 (3) Any person failing to collect or remit to the department any
21 tax required in connection with a delivery sale shall be assessed, in
22 addition to any other penalty, a penalty of five times the retail value
23 of the cigarettes involved.

24 (4)(a) Any cigarettes sold or attempted to be sold in a delivery
25 sale that do not meet the requirements of this chapter shall be
26 forfeited to the state and destroyed.

27 (b) All fixtures, equipment, and all other materials and personal
28 property on the premises of any person who, with the intent to defraud
29 the state, violates any of the requirements of this chapter, shall be
30 forfeited to the state.

31 NEW SECTION. **Sec. 9.** The attorney general or his or her designee,
32 or any person who holds a valid permit under 26 U.S.C. Sec. 5712, may
33 bring an action in the appropriate court in the state to prevent or
34 restrain violations of this chapter by any person, or any person
35 controlling the person.

1 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute
2 a new chapter in Title 82 RCW.

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