
HOUSE BILL 2284

State of Washington 59th Legislature 2005 Regular Session

By Representatives Tom, McDermott and Curtis

Read first time 03/04/2005. Referred to Committee on Health Care.

1 AN ACT Relating to unlawful shipment of tobacco products to state
2 consumers; adding a new chapter to Title 70 RCW; and prescribing
3 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) "Person" means an individual, partnership, franchise holder,
8 association, corporation, state, city, county, or a subdivision or
9 instrumentality of a state, and its employees, agents, or legal
10 representatives.

11 (2) "Tobacco products" means one or more cigarettes or cigars,
12 bidis, chewing tobacco, powdered tobacco, or any other tobacco
13 products.

14 (3) "Tobacco business" means a sole proprietorship, corporation,
15 limited liability company, partnership, or other enterprise in which
16 the primary activity is the sale, manufacture, or promotion of tobacco,
17 tobacco products, and accessories, either at wholesale or retail, and
18 in which the sale, manufacture, or promotion of other products is
19 merely incidental.

1 NEW SECTION. **Sec. 2.** It is unlawful for a person in the business
2 of manufacturing, distributing, or selling tobacco products, including
3 those selling tobacco products over the internet or through mail-order
4 sales, to deliver or cause to be delivered any tobacco products to a
5 person in this state except in a face-to-face transaction at the time
6 of purchase, unless the tobacco products being delivered are in a
7 container or in wrapping plainly and visibly marked on the exterior
8 with the word "tobacco products" and the delivery is made to one of the
9 following persons for purposes other than personal consumption by the
10 recipient:

- 11 (1) A person who holds a license under RCW 82.24.520 or 82.24.530;
- 12 (2) An export warehouse proprietor under chapter 52 of the internal
13 revenue code or an operator of a customs bonded warehouse; or
- 14 (3) A person who is an officer, employee, or agent of the United
15 States government, this state, or a department, agency,
16 instrumentality, or political subdivision of the United States or this
17 state, when the person is acting in accordance with his or her official
18 duties.

19 NEW SECTION. **Sec. 3.** It is unlawful for a person in the business
20 of manufacturing, distributing, or selling tobacco products, including
21 those selling tobacco products over the internet or through mail-order
22 sales, to deliver or cause to be delivered, any tobacco products to a
23 person in this state under eighteen years of age or to any home or
24 residence in this state.

25 NEW SECTION. **Sec. 4.** It is unlawful for a person within the
26 jurisdiction of this state's laws, including all common carriers or
27 commercial delivery services, to knowingly transport tobacco products
28 on behalf of another person for commercial or business purposes to:

- 29 (1) A person in this state under eighteen years of age;
- 30 (2) A home or residence in this state; or
- 31 (3) A person in this state other than a person described in section
32 2 of this act. It is unlawful for a common or contract carrier to
33 knowingly transport cigarettes to a person in this state reasonably
34 believed by the carrier to be other than a person described in section
35 2 of this act.

1 NEW SECTION. **Sec. 5.** (1) The department of licensing shall make
2 public, by posting on the internet and by other means, a list of all
3 persons currently licensed or registered by the state as agents,
4 dealers, or distributors, as described in section 2 of this act.

5 (2) The department of licensing shall provide to the United States
6 postal service, common carriers, commercial delivery services operating
7 in the state, and any other persons that deliver tobacco products into
8 or in the state a copy of this chapter and a list of persons making or
9 offering tobacco product sales or deliveries in or into the state in
10 violation of this chapter. Ten days before putting a person on this
11 list, the department shall send notice to that person, by letter or e-
12 mail, that the interstate seller is being placed on the department's
13 list with that notice including the text of this chapter. This list
14 shall be kept confidential by all parties that receive it and shall be
15 used only to comply with this chapter.

16 (3) It is unlawful for a person within the jurisdiction of this
17 state's laws that receives a list provided by the department of
18 licensing, under this section, to make any deliveries in the state on
19 behalf of a person who is identified by that list unless:

20 (a) The delivery service or other person making the delivery knows
21 or affirmatively believes in good faith that the package does not
22 contain tobacco products; or

23 (b) The delivery is made to a person lawfully engaging in the
24 business of distributing or selling tobacco products.

25 (4) A delivery service or other person receiving a list from the
26 department of licensing under this section:

27 (a) Has no obligation to inspect any package to determine whether
28 or not it contains tobacco products, determine whether the list
29 provided by a state is complete, accurate, or up to date, or determine
30 whether a person ordering a delivery is in compliance with this
31 chapter.

32 (b) Is not subject to a penalty for:

33 (i) Not making any specific delivery on behalf of a person on the
34 list provided under this section;

35 (ii) Establishing and following a policy of not making deliveries
36 in the state on behalf of a person on the list provided under this
37 section, not making deliveries of tobacco products in the state, or not

1 making deliveries of tobacco products in the state for a person, or for
2 a person not in the business of manufacturing, distributing, or selling
3 tobacco products.

4 (5) A delivery service or other person receiving a list from the
5 department of licensing under this section may collect an additional
6 fee from its customers that order deliveries of tobacco products in
7 order to cover any costs incurred by the delivery service or other
8 person related to complying with this chapter.

9 (6) A delivery service or other person receiving a list from the
10 department of licensing under this section is not subject to criminal
11 penalties for a violation of this chapter unless that violation is done
12 knowingly and for the specific purpose of:

13 (a) Assisting a person engaged in the business of manufacturing,
14 distributing, or selling tobacco products to violate this chapter; or

15 (b) Profiting from the violation of this chapter by another person.

16 (7) No employee of a delivery service or of another person making
17 deliveries on behalf of a delivery seller is subject to criminal
18 penalties or civil fines for violating this chapter unless that
19 violation is done knowingly and for the specific purpose of assisting
20 a person engaged in the business of manufacturing, distributing, or
21 selling tobacco products to violate this chapter.

22 NEW SECTION. **Sec. 6.** This chapter does not apply to tobacco
23 product sales by an Indian tribe, as defined by 25 U.S.C. Sec. 450b(e),
24 or by members of the Indian tribe, to a consumer in this state if the
25 consumer is a verified adult member of the Indian tribe, and the buyer
26 and seller are located in Indian country, as defined by 18 U.S.C. Sec.
27 1151, that is owned or occupied by the Indian tribe.

28 NEW SECTION. **Sec. 7.** (1) A person who violates this chapter is
29 subject to a civil fine of not less than five hundred dollars and not
30 more than five thousand dollars or five times the value of the tobacco
31 products at issue, whichever is highest, for each violation.

32 (2) A person engaged in the business of manufacturing or selling
33 tobacco products who violates section 2 or 3 of this act must reimburse
34 the state and its political subdivisions for all unpaid taxes of the
35 state or its political subdivisions relating to the tobacco products at
36 issue, plus interest, and for any other damages.

1 (3) A person who violates this chapter must pay, in addition to any
2 other damages or penalties, an amount equal to any profits, gain, gross
3 receipts, or other benefits from the violation.

4 (4) Except as provided in section 5 of this act, a person who
5 knowingly violates section 2, 3, or 4 of this act shall be fined up to
6 five thousand dollars or ten times the value of the tobacco products at
7 issue, whichever is highest, or imprisoned for up to one year, or both
8 for a first violation, and fined not less than ten thousand dollars or
9 imprisoned for up to five years, or both for a second or subsequent
10 violation.

11 NEW SECTION. **Sec. 8.** An amount equal to fifty percent of all
12 criminal and civil penalties recovered by the state under section 7 of
13 this act shall be distributed to the state offices or agencies
14 responsible for enforcing this chapter or making related
15 investigations, in rough proportion to their participation in the
16 enforcement of this chapter and related investigations, solely to
17 increase and supplement, but not to replace, existing resources
18 supporting state efforts to enforce this chapter and to enforce other
19 state laws relating to contraband tobacco products, the collection of
20 taxes on tobacco products, and the prohibition of tobacco product sales
21 to persons under the legal minimum purchase age.

22 NEW SECTION. **Sec. 9.** In an action brought to enforce this
23 chapter, the state may recover the costs of the investigation, costs of
24 the action, and reasonable attorneys' fees, plus interest. All
25 recovered costs and fees, plus interest, shall be directed to and
26 retained by the state agencies and offices that incurred the costs and
27 fees.

28 NEW SECTION. **Sec. 10.** Tobacco products sold or delivered or
29 attempted to be sold or delivered in this state in a manner that does
30 not meet the requirements of this chapter shall be forfeited to the
31 state.

32 NEW SECTION. **Sec. 11.** Unless otherwise expressly provided, the
33 remedies or penalties provided by this chapter are cumulative to each

1 other, and to any other damages, remedies, penalties, or relief
2 available under this chapter or other laws of this state.

3 NEW SECTION. **Sec. 12.** (1) The attorney general or his or her
4 designee may bring an action in the appropriate court in the state to
5 enforce this chapter, seek fines, penalties, and related damages and
6 equitable relief, or to prevent or restrain violations of this chapter
7 by a person, or any person controlling such person.

8 (2) Upon providing at least fifteen days' notice to the attorney
9 general, enforcement officials of any state political subdivision may
10 bring an action in the appropriate court in the state, or join an
11 action being brought by the attorney general or his or her designee, to
12 seek damages and equitable relief or to prevent or restrain violations
13 of this chapter by any person, or any person controlling such person.

14 (3) Upon providing at least fifteen days' notice to the attorney
15 general, a person who holds a valid permit under 26 U.S.C. Sec. 5712,
16 may bring an action in the appropriate court in the state, or join an
17 action being brought by the attorney general or his or her designee, to
18 prevent or restrain violations of this chapter by a person, or any
19 person controlling such person.

20 (4) Upon receiving notice from a person of his or her intent to
21 bring an action under this chapter in the appropriate court in the
22 state, the attorney general or his or her designee may choose to join
23 in the other person's action or bring an action by the state in its
24 stead, and shall inform the person providing notice of how the attorney
25 general or the designee will proceed within fifteen days of receiving
26 the notice.

27 (5) The attorney general shall make public, by posting on the
28 internet and other means, a list of all actions taken to enforce this
29 chapter and a list of all persons found to have violated this chapter,
30 including those persons' names, addresses, and any other information
31 the attorney general believes may be useful to other jurisdictions
32 enforcing laws prohibiting or restricting tobacco product sales for
33 personal consumption in which the seller and buyer do not initiate and
34 complete the entire transaction when in each other's physical presence.

1 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
2 constitute a new chapter in Title 70 RCW.

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