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HOUSE BILL 2346

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Simpson, Appleton, Williams and Schual-Berke

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Committee on Commerce & Labor.

1            AN ACT Relating to fire safety for cigarettes; reenacting and  
2 amending RCW 43.79A.040; adding a new chapter to Title 19 RCW;  
3 prescribing penalties; and declaring an emergency.

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 requires otherwise.

7            (1) "Cigarette" means a product that contains nicotine, is intended  
8 to be burned or heated under ordinary conditions of use, and consists  
9 of or contains:

10            (a) A roll of tobacco wrapped in paper or in any substance not  
11 containing tobacco;

12            (b) Tobacco, in any form, that is functional in the product and  
13 that, because of its appearance, the type of tobacco used in the  
14 filler, or its packaging and labeling, is likely to be offered to or  
15 purchased by consumers as a cigarette; or

16            (c) Any roll of tobacco that is wrapped in a substance containing  
17 tobacco and that, because of its appearance, the type of tobacco used  
18 in the filler, or its packaging and labeling, is likely to be offered

1 to or purchased by consumers as a cigarette described in (a) of this  
2 subsection.

3 (2) "Distribute" means to do any of the following:

4 (a) Sell cigarettes or deliver cigarettes for sale by another  
5 person to consumers;

6 (b) Receive or retain more than one hundred ninety-nine cigarettes  
7 at a place of business where the person receiving or retaining the  
8 cigarettes customarily sells cigarettes or offers cigarettes for sale  
9 to consumers;

10 (c) Place cigarettes in vending machines;

11 (d) Sell or accept orders for cigarettes that are to be transported  
12 from a point outside this state to a consumer within this state; or

13 (e) Buy cigarettes directly from a manufacturer or wholesaler for  
14 resale in this state.

15 (3) "Fire-safe cigarette" means a reduced ignition strength  
16 cigarette of a variety declared to be fire safe by the state director  
17 of fire protection under section 2 of this act.

18 (4) "Variety" means a type of cigarette marketed by the  
19 manufacturer as being distinct from other types of cigarettes on the  
20 basis of brand name, length, filter, wrapping, flavoring, or other  
21 characteristics as the state director of fire protection may provide by  
22 rule.

23 NEW SECTION. **Sec. 2.** (1) The state director of fire protection  
24 shall determine for each variety of cigarette sold or proposed for sale  
25 in this state whether that variety of cigarette is fire safe. The  
26 state director of fire protection may make the determination by  
27 conducting ignition propensity strength testing or by accepting the  
28 results of ignition propensity strength testing conducted by any source  
29 the state director of fire protection recognizes as reliable.

30 (2) Except as provided in this subsection, ignition propensity  
31 strength testing conducted or relied upon under subsection (1) of this  
32 section must be performed using the Standard Test Method for Measuring  
33 the Ignition Strength of Cigarettes, E2187-04, developed by ASTM  
34 International. The state director of fire protection may conduct or  
35 rely upon an ignition propensity strength testing method developed by  
36 ASTM International as a modification or replacement of the method  
37 designated by this subsection if the state director of fire protection,

1 by rule, deems the modified or replacement method acceptable. The  
2 conducted or relied upon testing must be conducted on ten layers of  
3 filter paper. The state director of fire protection shall declare a  
4 cigarette variety to be fire safe if not more than twenty-five percent  
5 of the cigarettes tested burned along the full length of the tobacco  
6 portion of the cigarette when subjected to ignition propensity strength  
7 testing.

8 (3) The state director of fire protection shall issue, keep  
9 current, and make available to the public a list of the cigarette  
10 varieties determined by the state director of fire protection to be  
11 fire safe.

12 (4) The state director of fire protection, by rule or upon  
13 application, may approve cigarette package or carton markings,  
14 stickers, labeling, or other devices that identify a cigarette variety  
15 as fire safe.

16 NEW SECTION. **Sec. 3.** (1) A person may not distribute or offer to  
17 sell a cigarette within this state unless the cigarette is of a variety  
18 the state director of fire protection has listed as fire safe under  
19 section 2 of this act. This subsection does not apply to distribution  
20 of, or an offer to sell, cigarettes exempted from state taxation.

21 (2) A cigarette package or carton may not bear markings, stickers,  
22 labeling, or other devices identifying cigarettes contained in the  
23 package or carton as fire-safe cigarettes unless the cigarettes are of  
24 a variety the state director of fire protection has listed as fire safe  
25 under section 2 of this act. This subsection does not apply if the  
26 cigarettes are in interstate commerce and not intended for distribution  
27 in this state.

28 (3) The state director of fire protection, an authorized  
29 representative of the state director of fire protection, or any law  
30 enforcement agency may immediately seize and subject to forfeiture any  
31 cigarettes distributed or offered for sale in violation of subsection  
32 (1) of this section and any cigarettes contained in packages or cartons  
33 bearing markings, stickers, labeling, or other devices in violation of  
34 subsection (2) of this section. The state director of fire protection  
35 shall destroy cigarettes seized and forfeited under this subsection.

36 (4) The state director of fire protection may enter into a  
37 cooperative agreement with any state or local agency that allows the

1 agency to act as an authorized representative of the state director of  
2 fire protection for enforcement purposes under subsection (3) of this  
3 section.

4 NEW SECTION. **Sec. 4.** The state director of fire protection may  
5 impose a civil penalty for a violation of section 3(1) of this act.  
6 The civil penalty may not exceed:

7 (1) For a person who distributes or offers to sell cigarettes to a  
8 wholesaler or retailer, ten thousand dollars or five times the value of  
9 the cigarettes involved in the violation, whichever is greater; or

10 (2) For a person who distributes or offers to sell cigarettes to  
11 the public:

12 (a) For a distribution or offer of not more than one thousand  
13 cigarettes, five hundred dollars; and

14 (b) For a distribution or offer of more than one thousand  
15 cigarettes, one thousand dollars or five times the retail value of the  
16 cigarettes involved in the violation, whichever is greater.

17 NEW SECTION. **Sec. 5.** An action may be brought by the attorney  
18 general, at the request of the state director of fire protection, in  
19 the name of the state, to recover civil penalties imposed under section  
20 4 of this act.

21 NEW SECTION. **Sec. 6.** (1) Notwithstanding section 2 of this act,  
22 the state director of fire protection, without conducting testing under  
23 section 2 of this act, shall include in the fire-safe cigarette list  
24 published by the state director of fire protection cigarettes of a  
25 variety sold in this state that were certified prior to the effective  
26 date of this act by the office of fire prevention and control,  
27 department of state, New York state, or a successor to that office, as  
28 complying with cigarette fire safety performance standards required for  
29 cigarettes sold in New York state after June 28, 2004.

30 (2) The state director of fire protection shall publish an initial  
31 list of cigarette varieties declared to be fire safe under section 2 of  
32 this act no later than twenty days after the effective date of this  
33 act.

1        NEW SECTION.    **Sec. 7.**    (1) Section 3(2) of this act is applicable  
2 thirty days after the effective date of this act.

3        (2)(a) Section 4(1) of this act applies only to violations  
4 occurring thirty or more days after the effective date of this act.

5        (b) Section 4(2) of this act applies only to violations occurring  
6 on or after January 1, 2006.

7        NEW SECTION.    **Sec. 8.**    The cigarette fire safety account is created  
8 in the custody of the state treasurer. All receipts from the  
9 imposition of civil penalties under section 4 of this act must be  
10 deposited into the account. Expenditures from the account may be used  
11 only for fire safety, enforcement, and prevention programs. Only the  
12 director of fire protection or the director's designee may authorize  
13 expenditures from the account. The account is subject to allotment  
14 procedures under chapter 43.88 RCW, but an appropriation is not  
15 required for expenditures.

16        **Sec. 9.**    RCW 43.79A.040 and 2005 c 424 s 18, 2005 c 402 s 8, 2005  
17 c 215 s 10, and 2005 c 16 s 2 are each reenacted and amended to read as  
18 follows:

19        (1) Money in the treasurer's trust fund may be deposited, invested,  
20 and reinvested by the state treasurer in accordance with RCW 43.84.080  
21 in the same manner and to the same extent as if the money were in the  
22 state treasury.

23        (2) All income received from investment of the treasurer's trust  
24 fund shall be set aside in an account in the treasury trust fund to be  
25 known as the investment income account.

26        (3) The investment income account may be utilized for the payment  
27 of purchased banking services on behalf of treasurer's trust funds  
28 including, but not limited to, depository, safekeeping, and  
29 disbursement functions for the state treasurer or affected state  
30 agencies. The investment income account is subject in all respects to  
31 chapter 43.88 RCW, but no appropriation is required for payments to  
32 financial institutions. Payments shall occur prior to distribution of  
33 earnings set forth in subsection (4) of this section.

34        (4)(a) Monthly, the state treasurer shall distribute the earnings  
35 credited to the investment income account to the state general fund  
36 except under (b) and (c) of this subsection.

1 (b) The following accounts and funds shall receive their  
2 proportionate share of earnings based upon each account's or fund's  
3 average daily balance for the period: The Washington promise  
4 scholarship account, the college savings program account, the  
5 Washington advanced college tuition payment program account, the  
6 agricultural local fund, the American Indian scholarship endowment  
7 fund, the foster care scholarship endowment fund, the foster care  
8 endowed scholarship trust fund, the students with dependents grant  
9 account, the basic health plan self-insurance reserve account, the  
10 contract harvesting revolving account, the Washington state combined  
11 fund drive account, the commemorative works account, the Washington  
12 international exchange scholarship endowment fund, the developmental  
13 disabilities endowment trust fund, the energy account, the fair fund,  
14 the fruit and vegetable inspection account, the future teachers  
15 conditional scholarship account, the game farm alternative account, the  
16 grain inspection revolving fund, the juvenile accountability incentive  
17 account, the law enforcement officers' and fire fighters' plan 2  
18 expense fund, the local tourism promotion account, the produce railcar  
19 pool account, the rural rehabilitation account, the stadium and  
20 exhibition center account, the youth athletic facility account, the  
21 self-insurance revolving fund, the sulfur dioxide abatement account,  
22 the children's trust fund, the Washington horse racing commission  
23 Washington bred owners' bonus fund account, the Washington horse racing  
24 commission class C purse fund account, the individual development  
25 account program account, the Washington horse racing commission  
26 operating account (earnings from the Washington horse racing commission  
27 operating account must be credited to the Washington horse racing  
28 commission class C purse fund account), the cigarette fire safety  
29 account, and the life sciences discovery fund. However, the earnings  
30 to be distributed shall first be reduced by the allocation to the state  
31 treasurer's service fund pursuant to RCW 43.08.190.

32 (c) The following accounts and funds shall receive eighty percent  
33 of their proportionate share of earnings based upon each account's or  
34 fund's average daily balance for the period: The advanced right of way  
35 revolving fund, the advanced environmental mitigation revolving  
36 account, the city and county advance right-of-way revolving fund, the  
37 federal narcotics asset forfeitures account, the high occupancy vehicle

1 account, the local rail service assistance account, and the  
2 miscellaneous transportation programs account.

3 (5) In conformance with Article II, section 37 of the state  
4 Constitution, no trust accounts or funds shall be allocated earnings  
5 without the specific affirmative directive of this section.

6 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and takes effect  
9 immediately.

10 NEW SECTION. **Sec. 11.** Sections 1 through 8 and 10 of this act  
11 constitute a new chapter in Title 19 RCW.

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