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SENATE BILL 5048

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State of Washington

59th Legislature

2005 Regular Session

By Senators Oke, Brown, Keiser, Swecker, Kline, Morton, Rockefeller, Deccio, Thibaudeau, Finkbeiner, McAuliffe, Sheldon, Rasmussen, Spanel, Berkey, Eide, Doumit, Regala, Kohl-Welles, Jacobsen, Franklin, Haugen, Fraser, Kastama and Weinstein

Read first time 01/12/2005. Referred to Committee on Labor, Commerce, Research & Development.

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 2003 c 113 s 1 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) "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 wholesaler licensed pursuant to chapter 82.24 RCW or a  
20 retailer pursuant to chapter 82.24 RCW is not a delivery sale.

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

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

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

29 ~~+6+)) "Sample" means a tobacco product distributed to members of~~  
30 the general public at no cost or at nominal cost for product promotion  
31 purposes.

32 (~~+7+)) ~~"Sampler" means a person engaged in the business of sampling~~  
33 ~~other than a retailer.~~~~

34 ~~+8+)) (6) "Sampling" means the distribution of samples to members~~  
35 of the (~~general~~) public (~~in a public place~~)).

36 (~~+9+)) (7) "Shipping container" means a container in which~~  
37 cigarettes are shipped in connection with a delivery sale.

1        ~~((10))~~ (8) "Shipping documents" means bills of lading, airbills,  
2 or any other documents used to evidence the undertaking by a delivery  
3 service to deliver letters, packages, or other containers.

4        ~~((11))~~ (9) "Tobacco product" means a product that contains  
5 tobacco and is intended for human ~~((consumption))~~ use, including any  
6 product defined in RCW 82.24.010(2) or 82.26.010(1).

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

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

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

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

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

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

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

31        (1) Where there may be a question of a person's right to purchase  
32 or obtain tobacco products by reason of age, the retailer ~~((, sampler,))~~  
33 or agent thereof, shall require the purchaser to present any one of the  
34 following officially issued identification that shows the purchaser's  
35 age and bears his or her signature and photograph: Liquor control  
36 authority card of identification of a state or province of Canada;

1 driver's license, instruction permit, or identification card of a state  
2 or province of Canada; "identocard" issued by the Washington state  
3 department of licensing under chapter 46.20 RCW; United States military  
4 identification; passport; or merchant marine identification card issued  
5 by the United States coast guard.

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

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

15 (1) The liquor control board may suspend or revoke a retailer's  
16 license issued under RCW 82.24.510(1)(b) held by a business at any  
17 location, or may impose a monetary penalty as set forth in subsection  
18 (2) of this section, if the liquor control board finds that the  
19 licensee has violated RCW 26.28.080, 70.155.020, 70.155.030,  
20 70.155.040, 70.155.050, (~~(70.155.060)~~) 70.155.070, or 70.155.090.

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

- 25 (a) For violation of RCW 26.28.080 or 70.155.020:
- 26 (i) A monetary penalty of one hundred dollars for the first  
27 violation within any two-year period;
  - 28 (ii) A monetary penalty of three hundred dollars for the second  
29 violation within any two-year period;
  - 30 (iii) A monetary penalty of one thousand dollars and suspension of  
31 the license for a period of six months for the third violation within  
32 any two-year period;
  - 33 (iv) A monetary penalty of one thousand five hundred dollars and  
34 suspension of the license for a period of twelve months for the fourth  
35 violation within any two-year period;
  - 36 (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 (b) For violations of RCW 70.155.030, a monetary penalty in the  
4 amount of one hundred dollars for each day upon which such violation  
5 occurred;

6 (c) For violations of RCW 70.155.040 occurring on the licensed  
7 premises:

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

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

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

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

18 (v) Revocation of the license with no possibility of reinstatement  
19 for a period of five years for the fifth or more violation within any  
20 two-year period;

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

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

25 (3) The liquor control board may impose a monetary penalty upon any  
26 person other than a licensed cigarette retailer (~~or licensed sampler~~)  
27 if the liquor control board finds that the person has violated RCW  
28 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050,  
29 (~~70.155.060~~), 70.155.070, or 70.155.090.

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

33 (a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for  
34 the first violation and one hundred dollars for each subsequent  
35 violation;

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

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

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

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

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

10 (6) The liquor control board may issue a cease and desist order to  
11 any person who is found by the liquor control board to have violated or  
12 intending to violate the provisions of this chapter, RCW 26.28.080 or  
13 82.24.500, requiring such person to cease specified conduct that is in  
14 violation. The issuance of a cease and desist order shall not preclude  
15 the imposition of other sanctions authorized by this statute or any  
16 other provision of law.

17 (7) The liquor control board may seek injunctive relief to enforce  
18 the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The  
19 liquor control board may initiate legal action to collect civil  
20 penalties imposed under this chapter if the same have not been paid  
21 within thirty days after imposition of such penalties. In any action  
22 filed by the liquor control board under this chapter, the court may, in  
23 addition to any other relief, award the liquor control board reasonable  
24 attorneys' fees and costs.

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

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

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

36 (1) If any person, subject to the provisions of this chapter or any  
37 rules adopted by the department of revenue under authority hereof, is

1 found to have failed to affix the stamps required, or to have them  
2 affixed as herein provided, or to pay any tax due hereunder, or to have  
3 violated any of the provisions of this chapter or rules adopted by the  
4 department of revenue in the administration hereof, there shall be  
5 assessed and collected from such person, in addition to any tax that  
6 may be found due, a remedial penalty equal to the greater of ten  
7 dollars per package of unstamped cigarettes or two hundred fifty  
8 dollars, plus interest on the amount of the tax at the rate as computed  
9 under RCW 82.32.050(2) from the date the tax became due until the date  
10 of payment, and upon notice mailed to the last known address of the  
11 person. The amount shall become due and payable in thirty days from  
12 the date of the notice. If the amount remains unpaid, the department  
13 or its duly authorized agent may make immediate demand upon such person  
14 for the payment of all such taxes, penalties, and interest.

15 (2) The department, for good reason shown, may waive or cancel all  
16 or any part of penalties imposed, but the taxpayer must pay all taxes  
17 due and interest thereon, at the rate as computed under RCW  
18 82.32.050(2) from the date the tax became due until the date of  
19 payment.

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

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

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

27 All of the provisions contained in chapter 82.32 RCW shall have  
28 full force and application with respect to taxes imposed under the  
29 provisions of this chapter, except the following sections: RCW  
30 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as  
31 noted otherwise in RCW ((~~82.24.270~~ and)) 82.24.280.

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

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

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

--- END ---