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**SUBSTITUTE SENATE BILL 6164**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Kohl-Welles, Oke and Rockefeller)

READ FIRST TIME 02/03/06.

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 providing an effective date.

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 (5) The state director of fire protection may enter into a  
17 cooperative agreement with any state or local agency that allows the  
18 agency to act as an authorized representative of the state director of  
19 fire protection for enforcement purposes under subsection (4) of this  
20 section.

21 NEW SECTION. **Sec. 3.** (1) A person may not distribute or offer to  
22 sell a cigarette within this state unless the cigarette is of a variety  
23 the state director of fire protection has listed as fire safe under  
24 section 2 of this act.

25 (a) Distributors, wholesalers, and retailers may sell their current  
26 inventory of cigarettes if they can demonstrate that the inventory was  
27 purchased prior to August 1, 2007, in comparable quantity to the  
28 inventory purchased during the same period of 2006.

29 (b) This subsection does not apply to distribution of, or an offer  
30 to sell, cigarettes exempted from state taxation.

31 (2) A cigarette package or carton may not bear markings, stickers,  
32 labeling, or other devices identifying cigarettes contained in the  
33 package or carton as fire-safe cigarettes unless the cigarettes are of  
34 a variety the state director of fire protection has listed as fire safe  
35 under section 2 of this act. This subsection does not apply if the  
36 cigarettes are in interstate commerce and not intended for distribution  
37 in this state.

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

9 (4) The state director of fire protection may enter into a  
10 cooperative agreement with any state or local agency that allows the  
11 agency to act as an authorized representative of the state director of  
12 fire protection for enforcement purposes under subsection (3) of this  
13 section.

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

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

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

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

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

27 NEW SECTION. **Sec. 5.** Any person who distributes or sells  
28 cigarettes in violation of this chapter and is aggrieved by an order  
29 issued for that violation by the state director of fire protection may,  
30 within thirty days after notice of the order, appeal under chapter  
31 34.05 RCW.

32 NEW SECTION. **Sec. 6.** An action may be brought by the attorney  
33 general, at the request of the state director of fire protection, in  
34 the name of the state, to recover civil penalties imposed under section  
35 4 of this act.

1        NEW SECTION.    **Sec. 7.**    (1) Notwithstanding section 2 of this act,  
2 the state director of fire protection, without conducting testing under  
3 section 2 of this act, shall include in the fire-safe cigarette list  
4 published by the state director of fire protection cigarettes of a  
5 variety sold in this state that were certified prior to the effective  
6 date of this act by the office of fire prevention and control,  
7 department of state, New York state, or a successor to that office, as  
8 complying with cigarette fire safety performance standards required for  
9 cigarettes sold in New York state after June 28, 2004.

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

14        NEW SECTION.    **Sec. 8.**    (1) Section 3(2) of this act is applicable  
15 September 1, 2007.

16        (2)(a) Section 4(1) of this act applies only to violations  
17 occurring on or after September 1, 2007.

18        (b) Section 4(2) of this act applies only to violations occurring  
19 on or after August 1, 2007.

20        NEW SECTION.    **Sec. 9.**    The cigarette fire safety account is created  
21 in the custody of the state treasurer. All receipts from the  
22 imposition of civil penalties under section 4 of this act must be  
23 deposited into the account. Expenditures from the account may be used  
24 only for fire safety, enforcement, fire prevention programs, and for  
25 the operation of the program. Only the state director of fire  
26 protection or the director's designee may authorize expenditures from  
27 the account. The account is subject to allotment procedures under  
28 chapter 43.88 RCW, but an appropriation is not required for  
29 expenditures.

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

33        (1) Money in the treasurer's trust fund may be deposited, invested,  
34 and reinvested by the state treasurer in accordance with RCW 43.84.080

1 in the same manner and to the same extent as if the money were in the  
2 state treasury.

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

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

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

17 (b) The following accounts and funds shall receive their  
18 proportionate share of earnings based upon each account's or fund's  
19 average daily balance for the period: The Washington promise  
20 scholarship account, the college savings program account, the  
21 Washington advanced college tuition payment program account, the  
22 agricultural local fund, the American Indian scholarship endowment  
23 fund, the foster care scholarship endowment fund, the foster care  
24 endowed scholarship trust fund, the students with dependents grant  
25 account, the basic health plan self-insurance reserve account, the  
26 contract harvesting revolving account, the Washington state combined  
27 fund drive account, the commemorative works account, the Washington  
28 international exchange scholarship endowment fund, the developmental  
29 disabilities endowment trust fund, the energy account, the fair fund,  
30 the fruit and vegetable inspection account, the future teachers  
31 conditional scholarship account, the game farm alternative account, the  
32 grain inspection revolving fund, the juvenile accountability incentive  
33 account, the law enforcement officers' and fire fighters' plan 2  
34 expense fund, the local tourism promotion account, the produce railcar  
35 pool account, the rural rehabilitation account, the stadium and  
36 exhibition center account, the youth athletic facility account, the  
37 self-insurance revolving fund, the sulfur dioxide abatement account,  
38 the children's trust fund, the Washington horse racing commission

1 Washington bred owners' bonus fund account, the Washington horse racing  
2 commission class C purse fund account, the individual development  
3 account program account, the Washington horse racing commission  
4 operating account (earnings from the Washington horse racing commission  
5 operating account must be credited to the Washington horse racing  
6 commission class C purse fund account), the cigarette fire safety  
7 account, and the life sciences discovery fund. However, the earnings  
8 to be distributed shall first be reduced by the allocation to the state  
9 treasurer's service fund pursuant to RCW 43.08.190.

10 (c) The following accounts and funds shall receive eighty percent  
11 of their proportionate share of earnings based upon each account's or  
12 fund's average daily balance for the period: The advanced right of way  
13 revolving fund, the advanced environmental mitigation revolving  
14 account, the city and county advance right-of-way revolving fund, the  
15 federal narcotics asset forfeitures account, the high occupancy vehicle  
16 account, the local rail service assistance account, and the  
17 miscellaneous transportation programs account.

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

21 NEW SECTION. **Sec. 11.** This act takes effect August 1, 2007.

22 NEW SECTION. **Sec. 12.** Sections 1 through 9 and 11 of this act  
23 constitute a new chapter in Title 19 RCW.

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