
SENATE BILL 6164

State of Washington

59th Legislature

2006 Regular Session

By Senators Kohl-Welles, Oke and Rockefeller

Read first time 01/09/2006. Referred to Committee on Labor, Commerce, Research & Development.

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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