

SSB 5340 - H COMM AMD

By Committee on Health Care & Wellness

NOT CONSIDERED 04/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.155.010 and 2006 c 14 s 2 are each amended to read
4 as follows:

5 The definitions set forth in RCW 82.24.010 shall apply to ((RCW
6 70.155.020 through 70.155.130)) this chapter. In addition, for the
7 purposes of this chapter, unless otherwise required by the context:

8 (1) "Board" means the Washington state liquor control board.

9 (2) ((~~"Delivery sale" means any sale of cigarettes to a consumer in
10 the state where either: (a) The purchaser submits an order for a sale
11 by means of a telephonic or other method of voice transmission, mail
12 delivery, any other delivery service, or the internet or other online
13 service; or (b) the cigarettes are delivered by use of mail delivery or
14 any other delivery service. A sale of cigarettes shall be a delivery
15 sale regardless of whether the seller is located within or without the
16 state. A sale of cigarettes not for personal consumption to a person
17 who is a wholesaler licensed pursuant to chapter 82.24 RCW or a
18 retailer pursuant to chapter 82.24 RCW is not a delivery sale.~~

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

23 ~~(4))~~ "Internet" means any computer network, telephonic network, or
24 other electronic network.

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

27 ~~((+5))~~ (4) "Sample" means a tobacco product distributed to members
28 of the general public at no cost or at nominal cost for product
29 promotion purposes.

1 ~~((6))~~ (5) "Sampling" means the distribution of samples to members
2 of the public.

3 ~~((7) "Shipping container" means a container in which cigarettes
4 are shipped in connection with a delivery sale.~~

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

8 ~~(9))~~ (6) "Tobacco product" means a product that contains tobacco
9 and is intended for human use, including any product defined in RCW
10 82.24.010(2) or 82.26.010(1), except that for the purposes of section
11 2 of this act only, "tobacco product" does not include cigars as
12 defined in RCW 82.26.010.

13 NEW SECTION. Sec. 2. A new section is added to chapter 70.155 RCW
14 to read as follows:

15 (1) A person may not:

16 (a) Ship or transport, or cause to be shipped or transported, any
17 tobacco product ordered or purchased by mail or through the internet to
18 anyone in this state other than a licensed wholesaler or retailer; or

19 (b) With knowledge or reason to know of the violation, provide
20 substantial assistance to a person who is in violation of this section.

21 (2)(a) A person who knowingly violates subsection (1) of this
22 section is guilty of a class C felony, except that the maximum fine
23 that may be imposed is five thousand dollars.

24 (b) In addition to or in lieu of any other civil or criminal remedy
25 provided by law, a person who has violated subsection (1) of this
26 section is subject to a civil penalty of up to five thousand dollars
27 for each violation. The attorney general, acting in the name of the
28 state, may seek recovery of the penalty in a civil action in superior
29 court. For purposes of this subsection, each shipment or transport of
30 tobacco products constitutes a separate violation.

31 (3) The attorney general may seek an injunction in superior court
32 to restrain a threatened or actual violation of subsection (1) of this
33 section and to compel compliance with subsection (1) of this section.

34 (4) Any violation of subsection (1) of this section is not
35 reasonable in relation to the development and preservation of business
36 and is an unfair and deceptive act or practice and an unfair method of
37 competition in the conduct of trade or commerce in violation of RCW

1 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
2 violation of subsection (1) of this section lies solely with the
3 attorney general. Remedies provided by chapter 19.86 RCW are
4 cumulative and not exclusive.

5 (5)(a) In any action brought under this section, the state is
6 entitled to recover, in addition to other relief, the costs of
7 investigation, expert witness fees, costs of the action, and reasonable
8 attorneys' fees.

9 (b) If a court determines that a person has violated subsection (1)
10 of this section, the court shall order any profits, gain, gross
11 receipts, or other benefit from the violation to be disgorged and paid
12 to the state treasurer for deposit in the general fund.

13 (6) Unless otherwise expressly provided, the penalties or remedies,
14 or both, under this section are in addition to any other penalties and
15 remedies available under any other law of this state.

16 NEW SECTION. **Sec. 3.** RCW 70.155.105 (Delivery sale of
17 cigarettes--Requirements, unlawful practices--Penalties--Enforcement)
18 and 2003 c 113 s 2 are each repealed."

19 Correct the title.

EFFECT: The amendment makes various clarifying and technical
changes, which include: (1) Adding the tobacco product shipping
restriction to the chapter addressing access of minors to tobacco
(instead of creating a new chapter in the code) and making related
technical corrections; (2) clarifying that shipping is allowed only to
licensed wholesalers and retailers; (3) using the term "internet" to
describe computer, telephonic, or other electronic networks; (4)
changing the criminal penalty to an unranked class C felony; and (5)
adding a requirement for civil penalties to be recovered by the
Attorney General in a civil action in superior court.

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