

FINAL BILL REPORT

SSB 5340

C 278 L 09
Synopsis as Enacted

Brief Description: Concerning internet and mail order sales of tobacco products.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Prentice, Regala, Pflug, Shin and Parlette; by request of Attorney General).

Senate Committee on Labor, Commerce & Consumer Protection
House Committee on Health Care & Wellness
House Committee on General Government Appropriations

Background: The sale of cigarettes to a minor and the purchase of cigarettes by a minor is a violation of state law.

In Washington, under the Delivery Sale of Cigarettes statute, a person who mails, ships or otherwise delivers cigarettes must verify the age of the receiver of cigarettes upon delivery. Additionally, a person who mails, ships, or otherwise delivers cigarettes must contract only with carriers who employ delivery agents who will verify that the receiver of the cigarettes is not a minor upon delivery.

A recent United States Supreme Court case held that Maine's similar statute, which required the tobacco retailers to use a delivery service that confirmed that the recipient must be of legal age to purchase tobacco products, is pre-empted by the Federal Aviation Administration Authorization Act of 1994, as it is "related to" a motor carrier price, route, or service. *Rowe v. New Hampshire Motor Transport Association*, 552 U.S. ____ (2008). The Court found that the state statute requires motor carrier operators to perform certain services that result in enlisting the motor carriers to enforce the state law. Imposing such requirements was held to be pre-empted by federal law.

Summary: The cigarette delivery sale statute is repealed.

A person may not ship tobacco products, other than cigars weighing more than three pounds for 1,000 units, purchased by mail or through the internet to anyone in Washington other than a licensed wholesaler or retailer. A person may not, with knowledge, provide substantial assistance to someone violating this tobacco shipping restriction.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The "Internet" is defined to mean computer, telephonic, or other electronic networks.

The Attorney General may seek an injunction to restrain a threatened or actual violation of the tobacco shipping restriction. In addition to any civil or criminal remedy provided by law, a violation of the tobacco shipping restriction is:

- punishable as an unranked class C felony for a knowing violation, except that the maximum fine is \$5,000;
- subject to a civil penalty of up to \$5,000 for each violating shipment, to be imposed by the Attorney General in an action in superior court; and
- subject to a Consumer Protection Act action, if the action is brought by the Attorney General.

A court may order a violator to disgorge profits or other gains to be paid to the State Treasurer for deposit in the State General Fund. The state is entitled to recover costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees in any action brought under the tobacco shipping restrictions.

Votes on Final Passage:

Senate	47	0	
House	90	7	(House amended)
Senate	37	9	(Senate concurred)

Effective: July 26, 2009