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**SUBSTITUTE HOUSE BILL 1249**

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**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Cody, Bailey, Dickerson, Roberts, Moeller, Kelley, Kenney, and Morrell; by request of Attorney General)

READ FIRST TIME 02/18/09.

1            AN ACT Relating to internet and mail order sales of certain tobacco  
2 products; amending RCW 70.155.010; adding a new section to chapter  
3 70.155 RCW; repealing RCW 70.155.105; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 70.155.010 and 2006 c 14 s 2 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)) this chapter. In addition, for the  
9 purposes of this 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 online~~  
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~~

1 ~~who is a wholesaler licensed pursuant to chapter 82.24 RCW or a~~  
2 ~~retailer pursuant to chapter 82.24 RCW is not a delivery sale.~~

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

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

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

11 ~~((5))~~ (4) "Sample" means a tobacco product distributed to members  
12 of the general public at no cost or at nominal cost for product  
13 promotion purposes.

14 ~~((6))~~ (5) "Sampling" means the distribution of samples to members  
15 of the public.

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

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

21 ~~(9))~~ (6) "Tobacco product" means a product that contains tobacco  
22 and is intended for human use, including any product defined in RCW  
23 82.24.010(2) or 82.26.010(1), except that for the purposes of section  
24 2 of this act only, "tobacco product" does not include cigars as  
25 defined in RCW 82.26.010.

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

28 (1) A person may not:

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

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

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

1 (b) In addition to or in lieu of any other civil or criminal remedy  
2 provided by law, a person who has violated subsection (1) of this  
3 section is subject to a civil penalty in an amount not to exceed five  
4 thousand dollars for each violation. The attorney general, acting in  
5 the name of the state, may seek recovery of the penalty in a civil  
6 action in superior court. For purposes of this subsection, each  
7 shipment or transport of tobacco products constitutes a separate  
8 violation.

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

12 (4) In any action brought under this section, the state is entitled  
13 to recover, in addition to other relief, the costs of investigation,  
14 expert witness fees, costs of the action, and reasonable attorneys'  
15 fees.

16 (5) Any violation of subsection (1) of this section is not  
17 reasonable in relation to the development and preservation of business  
18 and is an unfair and deceptive act or practice and an unfair method of  
19 competition in the conduct of trade or commerce in violation of RCW  
20 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for  
21 violation of subsection (1) of this section lies solely with the  
22 attorney general. Remedies provided by chapter 19.86 RCW are  
23 cumulative and not exclusive.

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

28 (7) Unless otherwise expressly provided, the penalties or remedies,  
29 or both, under this section are in addition to any other penalties and  
30 remedies available under any other law of this state.

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

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