

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1435

Chapter 154, Laws of 2009

61st Legislature
2009 Regular Session

CIGARETTE AND TOBACCO PRODUCTS LICENSES--ADMINISTRATION

EFFECTIVE DATE: 07/26/09

Passed by the House March 10, 2009
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2009
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved April 21, 2009, 2:48 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1435** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 22, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1435

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Condotta and Conway; by request of Liquor Control Board)

READ FIRST TIME 02/17/09.

1 AN ACT Relating to licensing administration for cigarettes and
2 tobacco products; and amending RCW 82.24.510, 82.24.550, 82.26.060,
3 82.26.150, 82.26.180, 82.26.190, 82.26.210, and 82.26.220.

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

5 **Sec. 1.** RCW 82.24.510 and 2001 c 235 s 8 are each amended to read
6 as follows:

7 (1) The licenses issuable under this chapter are as follows:

8 (a) A wholesaler's license.

9 (b) A retailer's license.

10 (2) Application for the licenses shall be made through the master
11 license system under chapter 19.02 RCW. The ((~~department of revenue~~))
12 board shall adopt rules regarding the regulation of the licenses. The
13 ((~~department of revenue~~)) board may refrain from the issuance of any
14 license under this chapter if the ((~~department~~)) board has reasonable
15 cause to believe that the applicant has wilfully withheld information
16 requested for the purpose of determining the eligibility of the
17 applicant to receive a license, or if the ((~~department~~)) board has
18 reasonable cause to believe that information submitted in the
19 application is false or misleading or is not made in good faith. In

1 addition, for the purpose of reviewing an application for a
2 wholesaler's license or retailer's license and for considering the
3 denial, suspension, or revocation of any such license, the
4 ~~((department))~~ board may consider ~~((criminal convictions of the~~
5 ~~applicant related to the selling of cigarettes))~~ any prior criminal
6 conduct of the applicant, including an administrative violation history
7 record with the board and a criminal history record information check
8 within the previous five years, in any state, tribal, or federal
9 jurisdiction in the United States, its territories, or possessions, and
10 the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to
11 such cases. The ~~((department))~~ board may, in its discretion, grant or
12 refuse the wholesaler's license or retailer's license, subject to the
13 provisions of RCW 82.24.550.

14 (3) No person may qualify for a wholesaler's license or a
15 retailer's license under this section without first undergoing a
16 criminal background check. The background check shall be performed by
17 the ~~((liquor control))~~ board and must disclose any criminal
18 ~~((convictions related to the selling of cigarettes))~~ conduct within the
19 previous five years in any state, tribal, or federal jurisdiction in
20 the United States, its territories, or possessions. A person who
21 possesses a valid license on July 22, 2001, is subject to this
22 subsection and subsection (2) of this section beginning on the date of
23 the person's master license expiration, and thereafter. If the
24 applicant or licensee also has a license issued under chapter 66.24 or
25 82.26 RCW, the background check done under the authority of chapter
26 66.24 or 82.26 RCW satisfies the requirements of this section.

27 (4) Each such license shall expire on the master license expiration
28 date, and each such license shall be continued annually if the licensee
29 has paid the required fee and complied with all the provisions of this
30 chapter and the rules of the ~~((department of revenue))~~ board made
31 pursuant thereto.

32 (5) Each license and any other evidence of the license that the
33 board requires must be exhibited in each place of business for which it
34 is issued and in the manner required for the display of a master
35 license.

36 **Sec. 2.** RCW 82.24.550 and 2005 c 180 s 19 are each amended to read
37 as follows:

1 (1) The board shall enforce the provisions of this chapter. The
2 board may adopt, amend, and repeal rules necessary to enforce and
3 administer the provisions of this chapter.

4 (2) The department may adopt, amend, and repeal rules necessary to
5 administer the provisions of this chapter. The (~~department has full~~
6 ~~power and authority to~~) board may revoke or suspend the license or
7 permit of any wholesale or retail cigarette dealer in the state upon
8 sufficient cause appearing of the violation of this chapter or upon the
9 failure of such licensee to comply with any of the provisions of this
10 chapter.

11 (3) A license shall not be suspended or revoked except upon notice
12 to the licensee and after a hearing as prescribed by the (~~department~~)
13 board. The (~~department~~) board, upon finding that the licensee has
14 failed to comply with any provision of this chapter or any rule adopted
15 under this chapter, shall, in the case of the first offense, suspend
16 the license or licenses of the licensee for a period of not less than
17 thirty consecutive business days, and, in the case of a second or
18 further offense, shall suspend the license or licenses for a period of
19 not less than ninety consecutive business days nor more than twelve
20 months, and, in the event the (~~department~~) board finds the licensee
21 has been guilty of willful and persistent violations, it may revoke the
22 license or licenses.

23 (4) Any licenses issued under chapter 82.26 RCW to a person whose
24 license or licenses have been suspended or revoked under this section
25 shall also be suspended or revoked during the period of suspension or
26 revocation under this section.

27 (5) Any person whose license or licenses have been revoked under
28 this section may (~~apply~~) reapply to the (~~department~~) board at the
29 expiration of one year (~~for a reinstatement~~) from the date of
30 revocation of the license or licenses. The license or licenses may be
31 (~~reinstated~~) approved by the (~~department~~) board if it appears to
32 the satisfaction of the (~~department~~) board that the licensee will
33 comply with the provisions of this chapter and the rules adopted under
34 this chapter.

35 (6) A person whose license has been suspended or revoked shall not
36 sell cigarettes or tobacco products or permit cigarettes or tobacco
37 products to be sold during the period of such suspension or revocation

1 on the premises occupied by the person or upon other premises
2 controlled by the person or others or in any other manner or form
3 whatever.

4 (7) Any determination and order by the ((department)) board, and
5 any order of suspension or revocation by the ((department)) board of
6 the license or licenses issued under this chapter, or refusal to
7 reinstate a license or licenses after revocation shall be reviewable by
8 an appeal to the superior court of Thurston county. The superior court
9 shall review the order or ruling of the ((department)) board and may
10 hear the matter de novo, having due regard to the provisions of this
11 chapter and the duties imposed upon ((the department and)) the board.

12 (8) If the board makes an initial decision to deny a license or
13 renewal, or suspend or revoke a license, the applicant may request a
14 hearing subject to the applicable provisions under Title 34 RCW.

15 (9) For purposes of this section, "tobacco products" has the same
16 meaning as in RCW 82.26.010.

17 **Sec. 3.** RCW 82.26.060 and 2005 c 180 s 4 are each amended to read
18 as follows:

19 (1) Every distributor shall keep at each place of business complete
20 and accurate records for that place of business, including itemized
21 invoices, of tobacco products held, purchased, manufactured, brought in
22 or caused to be brought in from without the state, or shipped or
23 transported to retailers in this state, and of all sales of tobacco
24 products made.

25 (2) These records shall show the names and addresses of purchasers,
26 the inventory of all tobacco products, and other pertinent papers and
27 documents relating to the purchase, sale, or disposition of tobacco
28 products. All invoices and other records required by this section to
29 be kept shall be preserved for a period of five years from the date of
30 the invoices or other documents or the date of the entries appearing in
31 the records.

32 (3) At any time during usual business hours the department, board,
33 or its duly authorized agents or employees, may enter any place of
34 business of a distributor, without a search warrant, and inspect the
35 premises, the records required to be kept under this chapter, and the
36 tobacco products contained therein, to determine whether or not all the
37 provisions of this chapter are being fully complied with. If the

1 department, board, or any of its agents or employees, are denied free
2 access or are hindered or interfered with in making such examination,
3 the registration certificate issued under RCW 82.32.030 of the
4 distributor at such premises shall be subject to revocation, and any
5 licenses issued under this chapter or chapter 82.24 RCW are subject to
6 suspension or revocation, by the department or board.

7 **Sec. 4.** RCW 82.26.150 and 2005 c 180 s 11 are each amended to read
8 as follows:

9 (1) The licenses issuable by the ((department)) board under this
10 chapter are as follows:

- 11 (a) A distributor's license; and
- 12 (b) A retailer's license.

13 (2) Application for the licenses shall be made through the master
14 license system under chapter 19.02 RCW. The ((department)) board may
15 adopt rules regarding the regulation of the licenses. The
16 ((department)) board may refuse to issue any license under this chapter
17 if the ((department)) board has reasonable cause to believe that the
18 applicant has willfully withheld information requested for the purpose
19 of determining the eligibility of the applicant to receive a license,
20 or if the ((department)) board has reasonable cause to believe that
21 information submitted in the application is false or misleading or is
22 not made in good faith. In addition, for the purpose of reviewing an
23 application for a distributor's license or retailer's license and for
24 considering the denial, suspension, or revocation of any such license,
25 the ((department)) board may consider criminal ((convictions)) conduct
26 of the applicant ((related-to-the-selling-of-tobacco-products)),
27 including an administrative violation history record with the board and
28 a criminal history record information check within the previous five
29 years, in any state, tribal, or federal jurisdiction in the United
30 States, its territories, or possessions, and the provisions of RCW
31 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The
32 ((department)) board may, in its discretion, issue or refuse to issue
33 the distributor's license or retailer's license, subject to the
34 provisions of RCW 82.26.220.

35 (3) No person may qualify for a distributor's license or a
36 retailer's license under this section without first undergoing a
37 criminal background check. The background check shall be performed by

1 the board and must disclose any criminal (~~convictions related to the~~
2 ~~selling of tobacco products~~) conduct within the previous five years in
3 any state, tribal, or federal jurisdiction in the United States, its
4 territories, or possessions. If the applicant or licensee also has a
5 license issued under chapter 66.24 or 82.24 RCW, the background check
6 done under the authority of chapter 66.24 or 82.24 RCW satisfies the
7 requirements of this section.

8 (4) Each license issued under this chapter shall expire on the
9 master license expiration date. The license shall be continued
10 annually if the licensee has paid the required fee and complied with
11 all the provisions of this chapter and the rules of the (~~department~~)
12 board adopted pursuant to this chapter.

13 (5) Each license and any other evidence of the license (~~as the~~
14 ~~department requires shall~~) required under this chapter must be
15 exhibited in (~~the~~) each place of business for which it is issued and
16 in the manner required for the display of a master license.

17 **Sec. 5.** RCW 82.26.180 and 2005 c 180 s 15 are each amended to read
18 as follows:

19 The (~~department~~) board shall compile and maintain a current
20 record of the names of all distributors and retailers licensed under
21 this chapter and the status of their license or licenses. The
22 information must be updated on a monthly basis and published on the
23 (~~department's~~) board's official internet web site. This information
24 is not subject to the confidentiality provisions of RCW 82.32.330 and
25 shall be disclosed to manufacturers, distributors, retailers, and the
26 general public upon request.

27 **Sec. 6.** RCW 82.26.190 and 2005 c 180 s 16 are each amended to read
28 as follows:

29 (1)(a) No person may engage in or conduct business as a distributor
30 or retailer in this state after September 30, 2005, without a valid
31 license issued (~~by the department~~) under this chapter. Any person
32 who sells tobacco products to persons other than ultimate consumers or
33 who meets the definition of distributor under RCW 82.26.010(3)(d) must
34 obtain a distributor's license under this chapter. Any person who
35 sells tobacco products to ultimate consumers must obtain a retailer's
36 license under this chapter.

1 (b) A violation of this subsection (1) is punishable as a class C
2 felony according to chapter 9A.20 RCW.

3 (2)(a) No person engaged in or conducting business as a distributor
4 or retailer in this state may:

5 (i) Refuse to allow the department or the board, on demand, to make
6 a full inspection of any place of business where any of the tobacco
7 products taxed under this chapter are sold, stored, or handled, or
8 otherwise hinder or prevent such inspection;

9 (ii) Make, use, or present or exhibit to the department or the
10 board any invoice for any of the tobacco products taxed under this
11 chapter that bears an untrue date or falsely states the nature or
12 quantity of the goods invoiced; or

13 (iii) Fail to produce on demand of the department or the board all
14 invoices of all the tobacco products taxed under this chapter within
15 five years prior to such demand unless the person can show by
16 satisfactory proof that the nonproduction of the invoices was due to
17 causes beyond the person's control.

18 (b) No person, other than a licensed distributor or retailer, may
19 transport tobacco products for sale in this state for which the taxes
20 imposed under this chapter have not been paid unless:

21 (i) Notice of the transportation has been given as required under
22 RCW 82.26.140;

23 (ii) The person transporting the tobacco products actually
24 possesses invoices or delivery tickets showing the true name and
25 address of the consignor or seller, the true name and address of the
26 consignee or purchaser, and the quantity and brands of tobacco products
27 being transported; and

28 (iii) The tobacco products are consigned to or purchased by a
29 person in this state who is licensed under this chapter.

30 (c) A violation of this subsection (2) is a gross misdemeanor.

31 (3) Any person licensed under this chapter as a distributor, and
32 any person licensed under this chapter as a retailer, shall not operate
33 in any other capacity unless the additional appropriate license is
34 first secured. A violation of this subsection (3) is a misdemeanor.

35 (4) The penalties provided in this section are in addition to any
36 other penalties provided by law for violating the provisions of this
37 chapter or the rules adopted under this chapter.

1 **Sec. 7.** RCW 82.26.210 and 2005 c 180 s 14 are each amended to read
2 as follows:

3 A manufacturer that has manufacturer's representatives who sell or
4 distribute the manufacturer's tobacco products in this state must
5 provide the ((department)) board a list of the names and addresses of
6 all such representatives and must ensure that the list provided to the
7 ((department)) board is kept current. A manufacturer's representative
8 is not authorized to distribute or sell tobacco products in this state
9 unless the manufacturer that hired the representative has a valid
10 distributor's license under this chapter and that manufacturer provides
11 the ((department)) board a current list of all of its manufacturer's
12 representatives as required by this section. A manufacturer's
13 representative must carry a copy of the distributor's license of the
14 manufacturer that hired the representative at all times when selling or
15 distributing the manufacturer's tobacco products.

16 **Sec. 8.** RCW 82.26.220 and 2005 c 180 s 18 are each amended to read
17 as follows:

18 (1) The board shall enforce this chapter. The board may adopt,
19 amend, and repeal rules necessary to enforce and administer this
20 chapter.

21 (2) The department may adopt, amend, and repeal rules necessary to
22 administer this chapter. The ((~~department has full power and authority~~
23 ~~to~~)) board may revoke or suspend the distributor's or retailer's
24 license of any distributor or retailer of tobacco products in the state
25 upon sufficient cause showing a violation of this chapter or upon the
26 failure of the licensee to comply with any of the rules adopted under
27 it.

28 (3) A license shall not be suspended or revoked except upon notice
29 to the licensee and after a hearing as prescribed by the ((department))
30 board. The ((department)) board, upon finding that the licensee has
31 failed to comply with any provision of this chapter or of any rule
32 adopted under it, shall, in the case of the first offense, suspend the
33 license or licenses of the licensee for a period of not less than
34 thirty consecutive business days, and in the case of a second or
35 further offense, suspend the license or licenses for a period of not
36 less than ninety consecutive business days but not more than twelve

1 months, and in the event the ((department)) board finds the licensee
2 has been guilty of willful and persistent violations, it may revoke the
3 license or licenses.

4 (4) Any licenses issued under chapter 82.24 RCW to a person whose
5 license or licenses have been suspended or revoked under this section
6 shall also be suspended or revoked during the period of suspension or
7 revocation under this section.

8 (5) Any person whose license or licenses have been revoked under
9 this section may ((apply)) reapply to the ((department)) board at the
10 expiration of one year ((for a reinstatement)) of the license or
11 licenses. The license or licenses may be ((reinstated)) approved by
12 the ((department)) board if it appears to the satisfaction of the
13 ((department)) board that the licensee will comply with the provisions
14 of this chapter and the rules adopted under it.

15 (6) A person whose license has been suspended or revoked shall not
16 sell tobacco products or cigarettes or permit tobacco products or
17 cigarettes to be sold during the period of suspension or revocation on
18 the premises occupied by the person or upon other premises controlled
19 by the person or others or in any other manner or form.

20 (7) Any determination and order by the ((department)) board, and
21 any order of suspension or revocation by the ((department)) board of
22 the license or licenses issued under this chapter, or refusal to
23 reinstate a license or licenses after revocation is reviewable by an
24 appeal to the superior court of Thurston county. The superior court
25 shall review the order or ruling of the ((department)) board and may
26 hear the matter de novo, having due regard to the provisions of this
27 chapter and the duties imposed upon ((the department and)) the board.

28 (8) If the board makes an initial decision to deny a license or
29 renewal, or suspend or revoke a license, the applicant may request a
30 hearing subject to the applicable provisions under Title 34 RCW.

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