
SENATE BILL 5380

State of Washington

62nd Legislature

2011 Regular Session

By Senators White, Harper, Pridemore, Kline, Nelson, Kohl-Welles, and Tom

Read first time 01/24/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to regulation of tobacco products; amending RCW
2 70.155.030 and 70.155.130; adding new sections to chapter 70.155 RCW;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that the use of
6 tobacco products of all types is a significant public health problem.
7 Like cigarettes, cigars and smokeless tobacco can lead to lifelong
8 nicotine addiction. Cigar and cigarette smokers face comparable risks
9 for oral, throat and esophageal cancers. Smokeless tobacco products
10 similarly raise users' risk of various diseases including cancers of
11 the lip, tongue, cheeks, and gums.

12 The legislature further finds that the use of noncigarette tobacco
13 products by youth is on the rise in Washington state. From 2004 -
14 2008, youth consumption of tobacco products other than cigarettes
15 increased forty-three percent locally. This increase has coincided
16 with the emergence on the market of a number of tobacco products with
17 enormous appeal to youth. These products include flavored tobacco
18 products, such as flavored cigars and smokeless tobacco, and
19 dissolvable tobacco products, which closely resemble candy.

1 Although the sale of tobacco products to minors is illegal
2 throughout Washington, minors are still readily able to purchase
3 tobacco products from otherwise legally operating retail outlets.
4 Youth access to tobacco products is facilitated by the fact that these
5 products are not required to be stored behind a counter.

6 Therefore, it is the intent of the legislature to reduce youth
7 access to tobacco products by restricting the sale of flavored tobacco
8 products and dissolvable tobacco products, and by requiring that
9 tobacco products be stored in a location that is inaccessible to youth.
10 By reducing youth access to tobacco products, the legislature intends
11 to reduce youth tobacco use rates and reduce the number of today's
12 children who will grow up to become addicted users, suffer from tobacco
13 use, and die prematurely from it.

14 **Sec. 2.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to read
15 as follows:

16 (1) No person shall sell or permit to be sold any tobacco product
17 through any device that mechanically dispenses tobacco products unless
18 the device is located fully within premises from which minors are
19 prohibited or in industrial worksites where minors are not employed and
20 not less than ten feet from all entrance or exit ways to and from each
21 premise. The board shall adopt rules that allow an exception to the
22 requirement that a device be located not less than ten feet from all
23 entrance or exit ways to and from a premise if it is architecturally
24 impractical for the device to be located not less than ten feet from
25 all entrance and exit ways.

26 (2) No person shall display or store tobacco products where those
27 products are accessible to consumers without direct assistance by the
28 sales personnel. This subsection shall not apply to the following:

29 (a) Vending machine sales as authorized by subsection (1) of this
30 section;

31 (b) A display of tobacco products that is located in a commercial
32 establishment in which by law no person younger than eighteen years of
33 age is permitted to enter at any time.

34 **Sec. 3.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to
35 read as follows:

36 ~~((This chapter preempts political subdivisions from adopting or~~

1 ~~enforcing requirements for the licensure and regulation of tobacco~~
2 ~~product promotions and sales within retail stores, except that~~
3 ~~political subdivisions that have adopted ordinances prohibiting~~
4 ~~sampling by January 1, 1993, may continue to enforce these ordinances.~~
5 ~~No political subdivision may: (1) Impose fees or license requirements~~
6 ~~on retail businesses for possessing or selling cigarettes or tobacco~~
7 ~~products, other than general business taxes or license fees not~~
8 ~~primarily levied on tobacco products; or (2) regulate or prohibit~~
9 ~~activities covered by RCW 70.155.020 through 70.155.080.)~~ Nothing in
10 this chapter ((does not otherwise preempt political subdivisions from
11 adopting ordinances regulating the sale, purchase, use, or promotion of
12 tobacco products not inconsistent with chapter 507, Laws of 1993))
13 shall be construed to supersede or preempt local laws, ordinances, or
14 regulations if those laws, ordinances, or regulations are at least as
15 restrictive as the provisions of this chapter.

16 NEW SECTION. Sec. 4. A new section is added to chapter 70.155 RCW
17 to read as follows:

18 (1) No person shall sell, distribute, offer for sale, or allow to
19 be sold or distributed any tobacco product or any component part
20 thereof that:

21 (a) Has or produces a distinguishable flavor, taste, or aroma other
22 than tobacco that can be readily perceived by a consumer or other
23 person through their sense of taste or smell either prior to or during
24 consumption;

25 (b) Does not have or produce such a distinguishable flavor, taste,
26 or aroma but is nevertheless labeled, advertised or otherwise marketed
27 by its manufacturer or its importer into the United States as having or
28 producing such a distinguishable flavor, taste, or aroma; or

29 (c) Includes, contains, or is comprised of capsular smokeless
30 tobacco.

31 (2) For the purposes of this section:

32 (a) "Capsular smokeless tobacco" means any product containing
33 tobacco that is intended or expected for oral consumption that does not
34 consist of loose tobacco and is offered in discrete single dose or
35 single use lozenges, pouches, pills, capsules, or other single dose or
36 single use units or in packages of such single dose or single use
37 units.

1 (b) "Tobacco product" includes any product containing tobacco or
2 nicotine that is expected or intended for human consumption except for:
3 (i) Any cigarette, as defined in RCW 82.24.010, and subject to the
4 special rule for cigarettes relating to characterizing flavors of the
5 federal family smoking and tobacco prevention act;
6 (ii) Any product that has been approved by the United States food
7 and drug administration, pursuant to its authority over drugs and
8 devices, for sale as a tobacco use cessation product or for other
9 medical purposes and is being marketed and sold solely for that
10 approved purpose.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.155 RCW
12 to read as follows:

13 The board may suspend or revoke a retailer's license issued under
14 RCW 82.24.510(1)(b) or 82.26.150(1)(b) held by a business at any
15 location, or may impose a monetary penalty as set forth in RCW
16 70.155.100(2)(a), if the board finds that the licensee has violated
17 this chapter.

18 NEW SECTION. **Sec. 6.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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