

**INITIATIVE 898**

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 898 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to the minimum age to possess tobacco products; and  
2 amending RCW 70.155.010, 70.155.020, 70.155.080, 70.155.105,  
3 70.155.110, and 70.155.120.

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

5 **Sec. 1.** RCW 70.155.010 and 2003 c 113 s 1 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. In addition, for the purposes of this  
9 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 on-line  
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) "Minor" refers to an individual who is less than ((eighteen))  
8 twenty-one years old.

9 (5) "Public place" means a public street, sidewalk, or park, or any  
10 area open to the public in a publicly owned and operated building.

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

14 (7) "Sampler" means a person engaged in the business of sampling  
15 other than a retailer.

16 (8) "Sampling" means the distribution of samples to members of the  
17 general public in a public place.

18 (9) "Shipping container" means a container in which cigarettes are  
19 shipped in connection with a delivery sale.

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

23 (11) "Tobacco product" means a product that contains tobacco and is  
24 intended for human consumption.

25 **Sec. 2.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to read  
26 as follows:

27 A person who holds a license issued under RCW 82.24.520 or  
28 82.24.530 shall:

29 (1) Display the license or a copy in a prominent location at the  
30 outlet for which the license is issued; and

31 (2) Display a sign concerning the prohibition of tobacco sales to  
32 minors.

33 Such sign shall:

34 (a) Be posted so that it is clearly visible to anyone purchasing  
35 tobacco products from the licensee;

36 (b) Be designed and produced by the department of health to read:  
37 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY

1 PROHIBITED BY STATE LAW. IF YOU ARE UNDER (~~18~~) 21, YOU COULD BE  
2 PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and  
3 (c) Be provided free of charge by the liquor control board.

4 **Sec. 3.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to  
5 read as follows:

6 (1) A person under the age of eighteen who purchases or attempts to  
7 purchase, possesses, or obtains or attempts to obtain cigarettes or  
8 tobacco products commits a class 3 civil infraction under chapter 7.80  
9 RCW and is subject to a fine as set out in chapter 7.80 RCW or  
10 participation in up to four hours of community restitution, or both.  
11 The court may also require participation in a smoking cessation  
12 program. This provision does not apply if a person under the age of  
13 (~~eighteen~~) twenty-one, with parental authorization, is participating  
14 in a controlled purchase as part of a liquor control board, law  
15 enforcement, or local health department activity.

16 (2) Municipal and district courts within the state have  
17 jurisdiction for enforcement of this section.

18 **Sec. 4.** RCW 70.155.105 and 2003 c 113 s 2 are each amended to read  
19 as follows:

20 (1) It is unlawful for a person who mails, ships, or otherwise  
21 delivers cigarettes to fail to:

22 (a) Verify the age of the receiver of the cigarettes upon delivery;  
23 and

24 (b) Obtain in writing, before the first delivery sale of  
25 cigarettes, verification of the receiver's address and that the  
26 receiver of the cigarettes is not a minor. The statement must also  
27 confirm that the purchaser understands: (i) That signing another  
28 person's name to the certification is a violation of RCW  
29 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a  
30 violation of RCW 26.28.080; (iii) that the purchase of cigarettes by  
31 minors is a violation of RCW 70.155.080; and (iv) that he or she has  
32 the option to receive mailings from a tobacco company about tobacco  
33 products.

34 (2) It is unlawful for a person to mail, ship, or otherwise deliver  
35 cigarettes in connection with a delivery sale unless before the first  
36 delivery sale to the consumer that person:

1 (a) Either verifies the information contained in the certification  
2 provided by the prospective consumer in subsection (1) of this section  
3 against a commercially available data base, or obtains a photocopy of  
4 an officially issued identification containing the bearer's age,  
5 signature, and photograph. The only forms of identification that are  
6 acceptable as proof of age for the purchase for tobacco products are:  
7 (i) A liquor control authority card of identification issued by a state  
8 of the United States or a province of Canada, (ii) a driver's license,  
9 instruction permit, or identification card issued by a state of the  
10 United States or a province of Canada, (iii) a United States military  
11 identification card, (iv) a passport, or (v) a merchant marine  
12 identification card issued by the United States coast guard;

13 (b) Provides to the prospective consumer through electronic mail or  
14 other means a notice that meets the requirements of subsection (3) of  
15 this section; and

16 (c) In the case of an order for cigarettes pursuant to an  
17 advertisement on the internet, receives payment for the delivery sale  
18 from the prospective consumer by a credit card or debit card, or by  
19 check that has been issued in the prospective consumer's name.

20 (3) The notice required under subsection (2)(b) of this section  
21 must include:

22 (a) A prominent and clearly legible statement that cigarette sales  
23 to minors are illegal;

24 (b) A prominent and clearly legible statement that consists of one  
25 of the warnings set forth in section 4(a)(1) of the federal cigarette  
26 labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a  
27 quarterly basis;

28 (c) A prominent and clearly legible statement that sales of  
29 cigarettes are restricted to those consumers who provide verifiable  
30 proof of age in accordance with subsection (1) of this section; and

31 (d) A prominent and clearly legible statement that cigarette sales  
32 are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an  
33 explanation of how the tax has been or is to be paid with respect to a  
34 delivery sale.

35 (4) It is unlawful for a person who mails, ships, or otherwise  
36 delivers cigarettes in connection with a delivery sale to fail to:

37 (a) Include as part of the bill of lading, or other shipping  
38 documents, a clear and conspicuous statement that states: "Cigarettes:

1 Washington Law Prohibits Shipping to Individuals Under ((18)) 21, and  
2 Requires the Payment of all Applicable Taxes";

3 (b) Contract only with private carriers who employ delivery agents  
4 who will verify the receiver of the cigarettes is not a minor upon  
5 delivery. The only forms of identification that are acceptable as  
6 proof of age for the purchase for tobacco products are: (i) A liquor  
7 control authority card of identification issued by a state of the  
8 United States or a province of Canada, (ii) a driver's license,  
9 instruction permit, or identification card issued by a state of the  
10 United States or a province of Canada, (iii) a United States military  
11 identification card, (iv) a passport, or (v) a merchant marine  
12 identification card issued by the United States coast guard;

13 (c) Provide to the delivery service retained for the delivery sale  
14 evidence of full compliance with this section.

15 (5)(a) Before making delivery sales or mailings, shipping, or  
16 otherwise delivering cigarettes to a Washington address in connection  
17 with any sales, any person who mails, ships, or otherwise delivers  
18 cigarettes shall file with the board a statement setting forth the  
19 person's name, trade name, and the address of the person's principal  
20 place of business and any other place of business.

21 (b) Any person who mails, ships, or otherwise delivers cigarettes  
22 in connection with a delivery sale shall within fifteen days after the  
23 first of each month file with the board a report of all delivery sales  
24 made by the person within this state for the preceding month. The  
25 report shall show the name and address of the consumer to whom the  
26 cigarettes were sold, the kind and quality, and the date of delivery  
27 thereof.

28 (6)(a) Any person other than a delivery service who violates any of  
29 the provisions of this section is guilty of a class C felony punishable  
30 by up to five years in prison and a fine of ten thousand dollars, and  
31 payment of the cost of investigation and prosecution, including  
32 attorneys' fees.

33 (b) Any person other than a delivery service who commits a second  
34 or subsequent violation of this section is (~~{guilty of}~~) guilty of a  
35 class B felony punishable by up to ten years in prison and a fine of  
36 twenty thousand dollars, and payment of the cost of investigation and  
37 prosecution, including attorneys' fees.

1 (c) Any delivery service that violates any provision of this  
2 section shall be guilty of a gross misdemeanor punishable by up to one  
3 year in jail and a fine of five thousand dollars.

4 (7) Any person that fails to collect or remit to the department of  
5 revenue any tax required under chapter 82.24 RCW in connection with a  
6 delivery sale shall be assessed, in addition to any other penalty, a  
7 penalty of five times the retail value of the cigarettes involved.

8 (8) For the purpose of obtaining information concerning any matter  
9 relating to the administration or enforcement of this title, the board  
10 or any of its agents may inspect the books, documents, and records of  
11 any person who makes delivery sales or mailings, or ships or otherwise  
12 delivers cigarettes or retains another person to make delivery sales or  
13 mailings, or to ship or otherwise deliver cigarettes insofar as such  
14 books, documents, and/or records pertain to the financial transaction  
15 involved. If such a person neglects or refuses to produce and submit  
16 for inspection any book, record, or document as required by this  
17 section when requested to do so by the board or its agent, then the  
18 board or the attorney general may seek an order in superior court  
19 compelling such production of books, records, or documents.

20 **Sec. 5.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
21 read as follows:

22 (1) The liquor control board shall, in addition to the board's  
23 other powers and authorities, have the authority to enforce the  
24 provisions of this chapter and RCW 26.28.080(4) and 82.24.500. The  
25 liquor control board shall have full power to revoke or suspend the  
26 license of any retailer or wholesaler in accordance with the provisions  
27 of RCW 70.155.100.

28 (2) The liquor control board and the board's authorized agents or  
29 employees shall have full power and authority to enter any place of  
30 business where tobacco products are sold for the purpose of enforcing  
31 the provisions of this chapter.

32 (3) For the purpose of enforcing the provisions of this chapter and  
33 RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer  
34 of the liquor control board who has reasonable grounds to believe a  
35 person observed by the officer purchasing, attempting to purchase, or  
36 in possession of tobacco products is under the age of (~~eighteen~~)  
37 twenty-one years of age, may detain such person for a reasonable period  
38 of time and in such a reasonable manner as is necessary to determine

1 the person's true identity and date of birth. Further, tobacco  
2 products possessed by persons under the age of (~~eighteen~~) twenty-one  
3 years of age are considered contraband and may be seized by a peace  
4 officer or enforcement officer of the liquor control board.

5 (4) The liquor control board may work with local county health  
6 departments or districts and local law enforcement agencies to conduct  
7 random, unannounced, inspections to assure compliance.

8 **Sec. 6.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to  
9 read as follows:

10 (1) The youth tobacco prevention account is created in the state  
11 treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530  
12 and funds collected by the liquor control board from the imposition of  
13 monetary penalties and samplers' fees shall be deposited into this  
14 account, except that ten percent of all such fees and penalties shall  
15 be deposited in the state general fund.

16 (2) Moneys appropriated from the youth tobacco prevention account  
17 to the department of health shall be used by the department of health  
18 for implementation of this chapter, including collection and reporting  
19 of data regarding enforcement and the extent to which access to tobacco  
20 products by youth has been reduced.

21 (3) The department of health shall enter into interagency  
22 agreements with the liquor control board to pay the costs incurred, up  
23 to thirty percent of available funds, in carrying out its enforcement  
24 responsibilities under this chapter. Such agreements shall set forth  
25 standards of enforcement, consistent with the funding available, so as  
26 to reduce the extent to which tobacco products are available to  
27 individuals under the age of (~~eighteen~~) twenty-one. The agreements  
28 shall also set forth requirements for data reporting by the liquor  
29 control board regarding its enforcement activities.

30 (4) The department of health and the department of revenue shall  
31 enter into an interagency agreement for payment of the cost of  
32 administering the tobacco retailer licensing system and for the  
33 provision of quarterly documentation of tobacco wholesaler, retailer,  
34 and vending machine names and locations.

35 (5) The department of health shall, within up to seventy percent of  
36 available funds, provide grants to local health departments or other  
37 local community agencies to develop and implement coordinated tobacco  
38 intervention strategies to prevent and reduce tobacco use by youth.

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