

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.

--- END ---