



AG REQUEST LEGISLATION – 2009 SESSION

TOBACCO INTERNET SALES

**BACKGROUND:**

Currently, non-face-to-face sales of tobacco products are permitted in Washington, subject to certain requirements. (RCW 70.155.105) One of these requirements is that deliveries of tobacco products be made only where the shippers verify that the person receiving tobacco products is not a minor. However, it appears that this ID verification requirement is no longer enforceable, due to a February 2008 U.S. Supreme Court decision that held a similar Maine statute to be preempted under the federal Motor Carrier Act of 1980.

Six states (Arkansas, Connecticut, Maryland, New York, Ohio and Vermont) currently have total bans on direct shipping of cigarettes to consumers. In its 2007 report, *Ending the Tobacco Problem, A Blueprint for the Nation*, the Institute of Medicine stated that the only practical way to effectively regulate online tobacco retailers is through legislation prohibiting both online tobacco sales and the shipment of tobacco products directly to consumers.

As the Tobacco Committee Co-Chair for the National Association of Attorneys General, Attorney General McKenna has continued Washington's leadership role in seeking to uphold the public health goals of the tobacco Master Settlement Agreement.

**THE PROBLEMS:**

The proliferation of online sales potentially poses several problems for Washington and its residents:

- Selling tobacco to minors is illegal in Washington, as in every state. Internet and mail-order sellers offer minors relatively easy access to tobacco. As noted above, our ability to verify the age of the recipients of tobacco products sold remotely now appears to be unenforceable.
- Internet sellers advertise that their customers can avoid state excise taxes. Purchases by Washington consumers of cigarettes over the Internet result in a loss of revenue to the state.
- Because they evade state taxes, Internet sellers place traditional licensed distributors and retailers at a competitive disadvantage.
- The availability of "cheap smokes" from online sellers undercuts the public health purpose of Washington's tobacco excise tax. Higher costs of tobacco products have been shown to be effective in deterring non-smokers—particularly youth—from starting to smoke, and serve as an incentive for smokers to quit.
- Internet sellers offer for sale tobacco products manufactured by some companies that have not complied with Washington's tobacco product manufacturer certification process, and, therefore, are not legal for sale in Washington. These sales violate RCW 70.157 and 70.158 (Washington's "escrow" statute and "complementary" legislation).

**LEGISLATION:**

The Attorney General's Office requests legislation prohibiting the shipment of certain tobacco products purchased through the Internet or by mail order to anyone other than licensed wholesalers or retailers, correcting a loophole in Washington's laws regarding age verification, taxation, public health goals and certification.