
ENGROSSED SUBSTITUTE HOUSE BILL 2272

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Huff, Clements, Alexander, Wensman, Sehlin and Mitchell)

Read first time 04/07/97.

1 AN ACT Relating to transferring the enforcement of existing
2 cigarette and tobacco taxes from the department of revenue to the
3 liquor control board; amending RCW 66.44.010, 82.24.010, 82.24.110,
4 82.24.130, 82.24.190, 82.24.250, 82.24.550, and 82.32.300; adding new
5 sections to chapter 82.24 RCW; adding a new section to chapter 82.26
6 RCW; prescribing penalties; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.24 RCW
9 to read as follows:

10 In transferring the enforcement of existing cigarette and tobacco
11 taxes from the department of revenue to the liquor control board, it is
12 the intent of the legislature that the cigarette and tobacco tax laws
13 of the state of Washington be aggressively enforced. Enforcement
14 officers of the liquor control board appointed under section 10 or 11
15 of this act shall pursue all necessary means within their statutory
16 authority in order to ensure compliance with chapters 82.24 and 82.26
17 RCW.

1 **Sec. 2.** RCW 66.44.010 and 1987 c 202 s 224 are each amended to
2 read as follows:

3 (1) All county and municipal peace officers are hereby charged with
4 the duty of investigating and prosecuting all violations of this title,
5 and the penal laws of this state relating to the manufacture,
6 importation, transportation, possession, distribution and sale of
7 liquor, and all fines imposed for violations of this title and the
8 penal laws of this state relating to the manufacture, importation,
9 transportation, possession, distribution and sale of liquor shall
10 belong to the county, city or town wherein the court imposing the fine
11 is located, and shall be placed in the general fund for payment of the
12 salaries of those engaged in the enforcement of the provisions of this
13 title and the penal laws of this state relating to the manufacture,
14 importation, transportation, possession, distribution and sale of
15 liquor: PROVIDED, That all fees, fines, forfeitures and penalties
16 collected or assessed by a district court because of the violation of
17 a state law shall be remitted as provided in chapter 3.62 RCW as now
18 exists or is later amended.

19 (2) In addition to any and all other powers granted, the board
20 shall have the power to enforce the penal provisions of this title and
21 the penal laws of this state relating to the manufacture, importation,
22 transportation, possession, distribution and sale of liquor.

23 (3)(a) In addition to the other duties under this section, the
24 board shall enforce chapters 82.24 and 82.26 RCW.

25 (b) Through aggressive enforcement of chapters 82.24 and 82.26 RCW,
26 the board shall reduce the ninety million dollars in lost cigarette and
27 tobacco tax revenue due to tax evasion. The board shall achieve a net
28 decrease in lost cigarette and tobacco revenue according to the
29 following schedules:

30 (i) By June 30, 1998, at least five percent;

31 (ii) By June 30, 1999, at least twelve and one-half percent;

32 (iii) By June 30, 2000, at least thirty percent;

33 (iv) By June 30, 2001, at least thirty-seven and one-half percent;

34 and

35 (v) By June 30, 2002, at least fifty percent.

36 The board shall sustain the fifty percent net decrease in lost
37 revenue due to cigarette and tobacco tax evasion after June 30, 2002.

38 (4) The board may appoint and employ, assign to duty and fix the
39 compensation of, officers to be designated as liquor enforcement

1 officers. Such liquor enforcement officers shall have the power, under
2 the supervision of the board, to enforce the penal provisions of this
3 title and the penal laws of this state relating to the manufacture,
4 importation, transportation, possession, distribution and sale of
5 liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall
6 have the power and authority to serve and execute all warrants and
7 process of law issued by the courts in enforcing the penal provisions
8 of this title or of any penal law of this state relating to the
9 manufacture, importation, transportation, possession, distribution and
10 sale of liquor. They shall have the power to arrest without a warrant
11 any person or persons found in the act of violating any of the penal
12 provisions of this title or of any penal law of this state relating to
13 the manufacture, importation, transportation, possession, distribution
14 and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW.

15 **Sec. 3.** RCW 82.24.010 and 1995 c 278 s 1 are each amended to read
16 as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter:

19 (1) "Board" means the liquor control board.

20 (2) "Cigarette" means any roll for smoking made wholly or in part
21 of tobacco, irrespective of size or shape and irrespective of the
22 tobacco being flavored, adulterated, or mixed with any other
23 ingredient, where such roll has a wrapper or cover made of paper or any
24 material, except where such wrapper is wholly or in the greater part
25 made of natural leaf tobacco in its natural state.

26 ~~((+2))~~ (3) "Indian tribal organization" means a federally
27 recognized Indian tribe, or tribal entity, and includes an Indian
28 wholesaler or retailer that is owned by an Indian who is an enrolled
29 tribal member conducting business under tribal license or similar
30 tribal approval within Indian country. For purposes of this chapter
31 "Indian country" is defined in the manner set forth in 18 U.S.C. Sec.
32 1151.

33 ~~((+3))~~ (4) "Precollection obligation" means the obligation of a
34 seller otherwise exempt from the tax imposed by this chapter to collect
35 the tax from that seller's buyer.

36 ~~((+4))~~ (5) "Retailer" means every person, other than a wholesaler,
37 who purchases, sells, offers for sale or distributes any one or more of
38 the articles taxed herein, irrespective of quantity or amount, or the

1 number of sales, and all persons operating under a retailer's
2 registration certificate.

3 ~~((+5))~~ (6) "Retail selling price" means the ordinary, customary or
4 usual price paid by the consumer for each package of cigarettes, less
5 the tax levied by this chapter and less any similar tax levied by this
6 state.

7 ~~((+6))~~ (7) "Stamp" means the stamp or stamps by use of which the
8 tax levy under this chapter is paid or identification is made of those
9 cigarettes with respect to which no tax is imposed.

10 ~~((+7))~~ (8) "Wholesaler" means every person who purchases, sells,
11 or distributes any one or more of the articles taxed herein to
12 retailers for the purpose of resale only.

13 ~~((+8))~~ (9) The meaning attributed, in chapter 82.04 RCW, to the
14 words "person," "sale," "business" and "successor" applies equally in
15 this chapter.

16 **Sec. 4.** RCW 82.24.110 and 1995 c 278 s 7 are each amended to read
17 as follows:

18 (1) Each of the following acts is a gross misdemeanor and
19 punishable as such:

20 (a) To sell, except as a licensed wholesaler engaged in interstate
21 commerce as to the article being taxed herein, without the stamp first
22 being affixed;

23 (b) To sell in Washington as a wholesaler to a retailer who does
24 not possess and is required to possess a current cigarette retailer's
25 license;

26 (c) To use or have in possession knowingly or intentionally any
27 forged or counterfeit stamps;

28 (d) For any person other than the department of revenue or its duly
29 authorized agent to sell any stamps not affixed to any of the articles
30 taxed herein whether such stamps are genuine or counterfeit;

31 (e) To violate any of the provisions of this chapter;

32 (f) To violate any lawful rule made and published by the department
33 of revenue or the board;

34 (g) To use any stamps more than once;

35 (h) To refuse to allow the department of revenue or its duly
36 authorized agent, on demand, to make full inspection of any place of
37 business where any of the articles herein taxed are sold or otherwise
38 hinder or prevent such inspection;

1 (i) Except as provided in this chapter, for any retailer to have in
2 possession in any place of business any of the articles herein taxed,
3 unless the same have the proper stamps attached;

4 (j) For any person to make, use, or present or exhibit to the
5 department of revenue or its duly authorized agent, any invoice for any
6 of the articles herein taxed which bears an untrue date or falsely
7 states the nature or quantity of the goods therein invoiced;

8 (k) For any wholesaler or retailer or his or her agents or
9 employees to fail to produce on demand of the department of revenue all
10 invoices of all the articles herein taxed or stamps bought by him or
11 her or received in his or her place of business within five years prior
12 to such demand unless he or she can show by satisfactory proof that the
13 nonproduction of the invoices was due to causes beyond his or her
14 control;

15 (l) For any person to receive in this state any shipment of any of
16 the articles taxed herein, when the same are not stamped, for the
17 purpose of avoiding payment of tax. It is presumed that persons other
18 than dealers who purchase or receive shipments of unstamped cigarettes
19 do so to avoid payment of the tax imposed herein;

20 (m) For any person to possess or transport in this state a quantity
21 of sixty thousand cigarettes or less unless the proper stamps required
22 by this chapter have been affixed or unless: (i) Notice of the
23 possession or transportation has been given as required by RCW
24 82.24.250; (ii) the person transporting the cigarettes has in actual
25 possession invoices or delivery tickets which show the true name and
26 address of the consignor or seller, the true name and address of the
27 consignee or purchaser, and the quantity and brands of the cigarettes
28 so transported; and (iii) the cigarettes are consigned to or purchased
29 by any person in this state who is authorized by this chapter to
30 possess unstamped cigarettes in this state.

31 (2) It is unlawful for any person knowingly or intentionally to
32 possess or to transport in this state a quantity in excess of sixty
33 thousand cigarettes unless the proper stamps required by this chapter
34 are affixed thereto or unless: (a) Proper notice as required by RCW
35 82.24.250 has been given; (b) the person transporting the cigarettes
36 actually possesses invoices or delivery tickets showing the true name
37 and address of the consignor or seller, the true name and address of
38 the consignee or purchaser, and the quantity and brands of the
39 cigarettes so transported; and (c) the cigarettes are consigned to or

1 purchased by a person in this state who is authorized by this chapter
2 to possess unstamped cigarettes in this state. Violation of this
3 section shall be punished as a class C felony under Title 9A RCW.

4 (3) All agents, employees, and others who aid, abet, or otherwise
5 participate in any way in the violation of the provisions of this
6 chapter or in any of the offenses described in this chapter shall be
7 guilty and punishable as principals, to the same extent as any
8 wholesaler or retailer or any other person violating this chapter.

9 **Sec. 5.** RCW 82.24.130 and 1990 c 216 s 5 are each amended to read
10 as follows:

11 (1) The following are subject to seizure and forfeiture:

12 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
13 that are found at any point within this state, which articles are held,
14 owned, or possessed by any person, and that do not have the stamps
15 affixed to the packages or containers.

16 (b) All conveyances, including aircraft, vehicles, or vessels,
17 which are used, or intended for use, to transport, or in any manner to
18 facilitate the transportation, for the purpose of sale or receipt of
19 property described in (a) of this subsection, except:

20 (i) A conveyance used by any person as a common or contract carrier
21 having in actual possession invoices or delivery tickets showing the
22 true name and address of the consignor or seller, the true name of the
23 consignee or purchaser, and the quantity and brands of the cigarettes
24 transported, unless it appears that the owner or other person in charge
25 of the conveyance is a consenting party or privy to a violation of this
26 chapter;

27 (ii) A conveyance subject to forfeiture under this section by
28 reason of any act or omission of which the owner thereof establishes to
29 have been committed or omitted without his or her knowledge or consent;

30 (iii) A conveyance encumbered by a bona fide security interest if
31 the secured party neither had knowledge of nor consented to the act or
32 omission.

33 (c) Any vending machine used for the purpose of violating the
34 provisions of this chapter.

35 (2) Property subject to forfeiture under this chapter may be seized
36 by any agent of the department authorized to collect taxes, any
37 enforcement officer of the board, or law enforcement officer of this
38 state upon process issued by any superior court or district court

1 having jurisdiction over the property. Seizure without process may be
2 made if:

3 (a) The seizure is incident to an arrest or a search under a search
4 warrant or an inspection under an administrative inspection warrant; or

5 (b) The department, the board, or the law enforcement officer has
6 probable cause to believe that the property was used or is intended to
7 be used in violation of this chapter and exigent circumstances exist
8 making procurement of a search warrant impracticable.

9 (3) Notwithstanding the foregoing provisions of this section,
10 articles taxed in this chapter which are in the possession of a
11 wholesaler or retailer, licensed under Washington state law, for a
12 period of time necessary to affix the stamps after receipt of the
13 articles, shall not be considered contraband.

14 **Sec. 6.** RCW 82.24.190 and 1987 c 202 s 244 are each amended to
15 read as follows:

16 When the department of revenue or the board has good reason to
17 believe that any of the articles taxed herein are being kept, sold,
18 offered for sale, or given away in violation of the provisions of this
19 chapter or regulations issued under authority hereof, it may make
20 affidavit of such fact, describing the place or thing to be searched,
21 before any judge of any court in this state, and such judge shall issue
22 a search warrant directed to the sheriff, any deputy, police officer,
23 or duly authorized agent of the department of revenue commanding him or
24 her diligently to search any building, room in a building, place or
25 vehicle as may be designated in the affidavit and search warrant, and
26 to seize such tobacco so possessed and to hold the same until disposed
27 of by law, and to arrest the person in possession or control thereof.
28 If upon the return of such warrant, it shall appear that any of the
29 articles taxed herein, unlawfully possessed, were seized, the same
30 shall be sold as provided in this chapter.

31 **Sec. 7.** RCW 82.24.250 and 1995 c 278 s 10 are each amended to read
32 as follows:

33 (1) No person other than: (a) A licensed wholesaler in the
34 wholesaler's own vehicle; or (b) a person who has given notice to the
35 (~~department~~) the board in advance of the commencement of
36 transportation shall transport or cause to be transported in this state
37 cigarettes not having the stamps affixed to the packages or containers.

1 (2) When transporting unstamped cigarettes, such persons shall have
2 in their actual possession or cause to have in the actual possession of
3 those persons transporting such cigarettes on their behalf invoices or
4 delivery tickets for such cigarettes, which shall show the true name
5 and address of the consignor or seller, the true name and address of
6 the consignee or purchaser, and the quantity and brands of the
7 cigarettes so transported.

8 (3) If the cigarettes are consigned to or purchased by any person
9 in this state such purchaser or consignee must be a person who is
10 authorized by chapter 82.24 RCW to possess unstamped cigarettes in this
11 state.

12 (4) In the absence of the notice of transportation required by this
13 section or in the absence of such invoices or delivery tickets, or, if
14 the name or address of the consignee or purchaser is falsified or if
15 the purchaser or consignee is not a person authorized by chapter 82.24
16 RCW to possess unstamped cigarettes, the cigarettes so transported
17 shall be deemed contraband subject to seizure and sale under the
18 provisions of RCW 82.24.130.

19 (5) Transportation of cigarettes from a point outside this state to
20 a point in some other state will not be considered a violation of this
21 section provided that the person so transporting such cigarettes has in
22 his possession adequate invoices or delivery tickets which give the
23 true name and address of such out-of-state seller or consignor and such
24 out-of-state purchaser or consignee.

25 (6) In any case where the department or its duly authorized agent,
26 or any peace officer of the state, has knowledge or reasonable grounds
27 to believe that any vehicle is transporting cigarettes in violation of
28 this section, the department, such agent, or such police officer, is
29 authorized to stop such vehicle and to inspect the same for contraband
30 cigarettes.

31 (7) For purposes of this section, the term "person authorized by
32 chapter 82.24 RCW to possess unstamped cigarettes" means:

33 (a) A wholesaler or retailer, licensed under Washington state law;

34 (b) The United States or an agency thereof; and

35 (c) Any person, including an Indian tribal organization, who, after
36 notice has been given to the ((department)) board as provided in this
37 section, brings or causes to be brought into the state unstamped
38 cigarettes, if within a period of time after receipt of the cigarettes
39 as the department determines by rule to be reasonably necessary for the

1 purpose the person has caused stamps to be affixed in accordance with
2 RCW 82.24.030 or otherwise made payment of the tax required by this
3 chapter in the manner set forth in rules adopted by the department.

4 **Sec. 8.** RCW 82.24.550 and 1993 c 507 s 17 are each amended to read
5 as follows:

6 (1) The ~~((department of revenue))~~ board shall enforce the
7 provisions of this chapter ~~((except RCW 82.24.500, which will be
8 enforced by the liquor control board))~~. The board may adopt, amend,
9 and repeal rules necessary to enforce the provisions of this chapter.

10 (2) The department of revenue may adopt, amend, and repeal rules
11 necessary to ~~((enforce and))~~ administer the provisions of this chapter.
12 The department of revenue has full power and authority to revoke or
13 suspend the license or permit of any wholesale or retail cigarette
14 dealer in the state upon sufficient cause appearing of the violation of
15 this chapter or upon the failure of such licensee to comply with any of
16 the provisions of this chapter.

17 ~~((+2))~~ (3) A license shall not be suspended or revoked except upon
18 notice to the licensee and after a hearing as prescribed by the
19 department of revenue. The department of revenue, upon a finding by
20 same, that the licensee has failed to comply with any provision of this
21 chapter or any rule promulgated thereunder, shall, in the case of the
22 first offender, suspend the license or licenses of the licensee for a
23 period of not less than thirty consecutive business days, and, in the
24 case of a second or plural offender, shall suspend the license or
25 licenses for a period of not less than ninety consecutive business days
26 nor more than twelve months, and, in the event the department of
27 revenue finds the offender has been guilty of willful and persistent
28 violations, it may revoke the license or licenses.

29 ~~((+3))~~ (4) Any person whose license or licenses have been so
30 revoked may apply to the department of revenue at the expiration of one
31 year for a reinstatement of the license or licenses. The license or
32 licenses may be reinstated by the department of revenue if it appears
33 to the satisfaction of the department of revenue that the licensee will
34 comply with the provisions of this chapter and the rules promulgated
35 thereunder.

36 ~~((+4))~~ (5) A person whose license has been suspended or revoked
37 shall not sell cigarettes or permit cigarettes to be sold during the
38 period of such suspension or revocation on the premises occupied by the

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

3 ~~((+5+))~~ (6) Any determination and order by the department of
4 revenue, and any order of suspension or revocation by the department of
5 revenue of the license or licenses, or refusal to reinstate a license
6 or licenses after revocation shall be reviewable by an appeal to the
7 superior court of Thurston county. The superior court shall review the
8 order or ruling of the department of revenue and may hear the matter de
9 novo, having due regard to the provisions of this chapter and the
10 duties imposed upon the department of revenue and the board.

11 **Sec. 9.** RCW 82.32.300 and 1983 c 3 s 222 are each amended to read
12 as follows:

13 The administration of this and chapters 82.04 through 82.27 RCW of
14 this title is vested in the department of revenue which shall prescribe
15 forms and rules of procedure for the determination of the taxable
16 status of any person, for the making of returns and for the
17 ascertainment, assessment and collection of taxes and penalties imposed
18 thereunder.

19 The department of revenue shall make and publish rules and
20 regulations, not inconsistent therewith, necessary to enforce ~~((their))~~
21 provisions of this chapter and chapters 82.02 through 82.23B and 82.27
22 RCW, and the liquor control board shall make and publish rules
23 necessary to enforce chapters 82.24 and 82.26 RCW, which shall have the
24 same force and effect as if specifically included therein, unless
25 declared invalid by the judgment of a court of record not appealed
26 from.

27 The department may employ such clerks, specialists, and other
28 assistants as are necessary. Salaries and compensation of such
29 employees shall be fixed by the department and shall be charged to the
30 proper appropriation for the department.

31 The department shall exercise general supervision of the collection
32 of taxes and, in the discharge of such duty, may institute and
33 prosecute such suits or proceedings in the courts as may be necessary
34 and proper.

35 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.24 RCW
36 to read as follows:

1 The department shall appoint, as duly authorized agents,
2 enforcement officers of the liquor control board to enforce provisions
3 of this chapter. These officers shall not be considered employees of
4 the department.

5 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.26 RCW
6 to read as follows:

7 The department shall appoint, as duly authorized agents,
8 enforcement officers of the liquor control board to enforce provisions
9 of this chapter. These officers shall not be considered employees of
10 the department.

11 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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