

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2542**

60th Legislature  
2008 Regular Session

Passed by the House February 18, 2008  
Yeas 94 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 11, 2008  
Yeas 48 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2542** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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HOUSE BILL 2542

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Passed Legislature - 2008 Regular Session

State of Washington                      60th Legislature                      2008 Regular Session

By Representative Ericks; by request of Department of Revenue

Prefiled 01/08/08. Read first time 01/14/08. Referred to Committee on Finance.

1            AN ACT Relating to enforcement of cigarette taxes through  
2 regulation of stamped and unstamped cigarettes; amending RCW 82.24.080,  
3 82.24.020, 82.24.110, and 82.24.250; creating a new section; and  
4 prescribing penalties.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that under Article III  
7 of the treaty with the Yakamas of 1855, members of the Yakama Nation  
8 have the right to travel upon all public highways. It is the  
9 legislature's intent to honor the treaty rights of the Yakama Nation,  
10 while protecting the state's interest in collecting and enforcing its  
11 cigarette taxes.

12            **Sec. 2.** RCW 82.24.080 and 1995 c 278 s 5 are each amended to read  
13 as follows:

14            (1) It is the intent and purpose of this chapter to levy a tax on  
15 all of the articles taxed under this chapter, sold, used, consumed,  
16 handled, possessed, or distributed within this state and to collect the  
17 tax from the person who first sells, uses, consumes, handles, possesses  
18 (either physically or constructively, in accordance with RCW 82.24.020)

1 or distributes them in the state. It is further the intent and purpose  
2 of this chapter that whenever any of the articles taxed under this  
3 chapter is given away for advertising or any other purpose, it shall be  
4 taxed in the same manner as if it were sold, used, consumed, handled,  
5 possessed, or distributed in this state.

6 (2) It is also the intent and purpose of this chapter that the tax  
7 shall be imposed at the time and place of the first taxable event and  
8 upon the first taxable person within this state. Any person whose  
9 activities would otherwise require payment of the tax imposed by  
10 subsection (1) of this section but who is exempt from the tax  
11 nevertheless has a precollection obligation for the tax that must be  
12 imposed on the first taxable event within this state. A precollection  
13 obligation may not be imposed upon a person exempt from the tax who  
14 sells, distributes, or transfers possession of cigarettes to another  
15 person who, by law, is exempt from the tax imposed by this chapter or  
16 upon whom the obligation for collection of the tax may not be imposed.  
17 Failure to pay the tax with respect to a taxable event shall not  
18 prevent tax liability from arising by reason of a subsequent taxable  
19 event.

20 (3) In the event of an increase in the rate of the tax imposed  
21 under this chapter, it is the intent of the legislature that the first  
22 person who sells, uses, consumes, handles, possesses, or distributes  
23 previously taxed articles after the effective date of the rate increase  
24 shall be liable for the additional tax, or its precollection obligation  
25 as required by this chapter, represented by the rate increase. The  
26 failure to pay the additional tax with respect to the first taxable  
27 event after the effective date of a rate increase shall not prevent tax  
28 liability for the additional tax from arising from a subsequent taxable  
29 event.

30 (4) It is the intent of the legislature that, in the absence of a  
31 cigarette tax contract or agreement under chapter 43.06 RCW, applicable  
32 taxes imposed by this chapter be collected on cigarettes sold by an  
33 Indian tribal organization to any person who is not an enrolled member  
34 of the federally recognized Indian tribe within whose jurisdiction the  
35 sale takes place consistent with collection of these taxes generally  
36 within the state. The legislature finds that applicable collection and  
37 enforcement measures under this chapter are reasonably necessary to  
38 prevent fraudulent transactions and place a minimal burden on the

1 Indian tribal organization, pursuant to the United States supreme  
2 court's decision in *Washington v. Confederated Tribes of the Colville*  
3 *Indian Reservation*, 447 U.S. 134 (1980).

4 **Sec. 3.** RCW 82.24.020 and 2003 c 114 s 1 are each amended to read  
5 as follows:

6 (1) There is levied and there shall be collected as provided in  
7 this chapter, a tax upon the sale, use, consumption, handling,  
8 possession or distribution of all cigarettes, in an amount equal to the  
9 rate of eleven and one-half mills per cigarette.

10 (2) An additional tax is imposed upon the sale, use, consumption,  
11 handling, possession, or distribution of all cigarettes, in an amount  
12 equal to the rate of five and one-fourth mills per cigarette. All  
13 revenues collected during any month from this additional tax shall be  
14 deposited in the violence reduction and drug enforcement account under  
15 RCW 69.50.520 by the twenty-fifth day of the following month.

16 (3) An additional tax is imposed upon the sale, use, consumption,  
17 handling, possession, or distribution of all cigarettes, in an amount  
18 equal to the rate of ten mills per cigarette through June 30, 1994,  
19 eleven and one-fourth mills per cigarette for the period July 1, 1994,  
20 through June 30, 1995, twenty mills per cigarette for the period July  
21 1, 1995, through June 30, 1996, and twenty and one-half mills per  
22 cigarette thereafter. All revenues collected during any month from  
23 this additional tax shall be deposited in the health services account  
24 created under RCW 43.72.900 by the twenty-fifth day of the following  
25 month.

26 (4) Wholesalers subject to the payment of this tax may, if they  
27 wish, absorb one-half mill per cigarette of the tax and not pass it on  
28 to purchasers without being in violation of this section or any other  
29 act relating to the sale or taxation of cigarettes.

30 (5) For purposes of this chapter, "possession" shall mean both (a)  
31 physical possession by the purchaser and, (b) when cigarettes are being  
32 transported to or held for the purchaser or his or her designee by a  
33 person other than the purchaser, constructive possession by the  
34 purchaser or his or her designee, which constructive possession shall  
35 be deemed to occur at the location of the cigarettes being so  
36 transported or held.

1       (6) In accordance with federal law and rules prescribed by the  
2 department, an enrolled member of a federally recognized Indian tribe  
3 may purchase cigarettes from an Indian tribal organization under the  
4 jurisdiction of the member's tribe for the member's own use exempt from  
5 the applicable taxes imposed by this chapter. Except as provided in  
6 subsection (7) of this section, any person, who purchases cigarettes  
7 from an Indian tribal organization and who is not an enrolled member of  
8 the federally recognized Indian tribe within whose jurisdiction the  
9 sale takes place, is not exempt from the applicable taxes imposed by  
10 this chapter.

11       (7) If the state enters into a cigarette tax contract or agreement  
12 with a federally recognized Indian tribe under chapter 43.06 RCW, the  
13 terms of the contract or agreement shall take precedence over any  
14 conflicting provisions of this chapter while the contract or agreement  
15 is in effect.

16       **Sec. 4.** RCW 82.24.110 and 2003 c 114 s 5 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) For any person other than the department of revenue, its duly  
32 authorized agent, or a licensed wholesaler who has lawfully purchased  
33 or obtained them to possess any stamps not affixed to any of the  
34 articles taxed herein whether such stamps are genuine or counterfeit;

35       (f) To violate any of the provisions of this chapter;

36       ~~((+f))~~ (g) To violate any lawful rule made and published by the  
37 department of revenue or the board;

1        ~~((g))~~ (h) To use any stamps more than once;

2        ~~((h))~~ (i) To refuse to allow the department of revenue or its  
3 duly authorized agent, on demand, to make full inspection of any place  
4 of business where any of the articles herein taxed are sold or  
5 otherwise hinder or prevent such inspection;

6        ~~((i))~~ (j) For any retailer to have in possession in any place of  
7 business any of the articles herein taxed, unless the same have the  
8 proper stamps attached;

9        ~~((j))~~ (k) For any person to make, use, or present or exhibit to  
10 the department of revenue or its duly authorized agent, any invoice for  
11 any of the articles herein taxed which bears an untrue date or falsely  
12 states the nature or quantity of the goods therein invoiced;

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

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

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

36        ~~((n))~~ (o) For any person to possess or receive in this state a  
37 quantity of ten thousand cigarettes or less unless the proper stamps

1 required by this chapter have been affixed or unless the person is  
2 authorized by this chapter to possess unstamped cigarettes in this  
3 state and is in compliance with the requirements of this chapter; and

4 (p) To possess, sell, distribute, purchase, receive, ship, or  
5 transport within this state any container or package of cigarettes that  
6 does not comply with this chapter.

7 (2) It is unlawful for any person knowingly or intentionally to  
8 possess or to:

9 (a) Transport in this state a quantity in excess of ((sixty)) ten  
10 thousand cigarettes unless the proper stamps required by this chapter  
11 are affixed thereto or unless: ((+a)) (i) Proper notice as required  
12 by RCW 82.24.250 has been given; ((+b)) (ii) the person transporting  
13 the cigarettes actually possesses invoices or delivery tickets showing  
14 the true name and address of the consignor or seller, the true name and  
15 address of the consignee or purchaser, and the quantity and brands of  
16 the cigarettes so transported; and ((+c)) (iii) the cigarettes are  
17 consigned to or purchased by a person in this state who is authorized  
18 by this chapter to possess unstamped cigarettes in this state; or

19 (b) Receive in this state a quantity in excess of ten thousand  
20 cigarettes unless the proper stamps required by this chapter are  
21 affixed thereto or unless the person is authorized by this chapter to  
22 possess unstamped cigarettes in this state and is in compliance with  
23 this chapter.

24 Violation of this ((section)) subsection (2) shall be punished as  
25 a class C felony under Title 9A RCW.

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

31 (4) For purposes of this section, "person authorized by this  
32 chapter to possess unstamped cigarettes in this state" has the same  
33 meaning as in RCW 82.24.250.

34 **Sec. 5.** RCW 82.24.250 and 2003 c 114 s 8 are each amended to read  
35 as follows:

36 (1) No person other than: (a) A licensed wholesaler in the  
37 wholesaler's own vehicle; or (b) a person who has given notice to the

1 board in advance of the commencement of transportation shall transport  
2 or cause to be transported in this state cigarettes not having the  
3 stamps affixed to the packages or containers.

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

11 (3) If (~~the~~) unstamped cigarettes are consigned to or purchased  
12 by any person in this state such purchaser or consignee must be a  
13 person who is authorized by this chapter to possess unstamped  
14 cigarettes in this state.

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

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

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

34 (7) For purposes of this section, the term "person authorized by  
35 this chapter to possess unstamped cigarettes in this state" means:

- 36 (a) A wholesaler, licensed under Washington state law;  
37 (b) The United States or an agency thereof; (~~and~~)



1 (c) Any person, including an Indian tribal organization, who, after  
2 notice has been given to the board as provided in this section, brings  
3 or causes to be brought into the state unstamped cigarettes, if within  
4 a period of time after receipt of the cigarettes as the department  
5 determines by rule to be reasonably necessary for the purpose the  
6 person has caused stamps to be affixed in accordance with RCW 82.24.030  
7 or otherwise made payment of the tax required by this chapter in the  
8 manner set forth in rules adopted by the department; and

9 (d) Any purchaser or consignee of unstamped cigarettes, including  
10 an Indian tribal organization, who has given notice to the board in  
11 advance of receiving unstamped cigarettes and who within a period of  
12 time after receipt of the cigarettes as the department determines by  
13 rule to be reasonably necessary for the purpose the person has caused  
14 stamps to be affixed in accordance with RCW 82.24.030 or otherwise made  
15 payment of the tax required by this chapter in the manner set forth in  
16 rules adopted by the department.

17 Nothing in this subsection (7) shall be construed as modifying RCW  
18 82.24.050 or 82.24.110.

19 (8) Nothing in this section shall be construed as limiting any  
20 otherwise lawful activity under a cigarette tax compact pursuant to  
21 chapter 43.06 RCW.

22 (9) Nothing in this section shall be construed as limiting the  
23 right to travel upon all public highways under Article III of the  
24 treaty with the Yakamas of 1855.

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