

CERTIFICATION OF ENROLLMENT

SENATE BILL 5715

63rd Legislature
2013 Regular Session

Passed by the Senate March 8, 2013
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 17, 2013
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5715** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5715

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Hill, Carrell, and Hargrove

Read first time 02/11/13. Referred to Committee on Ways & Means.

1 AN ACT Relating to addressing the evasion of taxes by the use of
2 certain electronic means; amending RCW 82.32.215 and 82.32.290; adding
3 new sections to chapter 82.32 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 82.32.215 and 1998 c 311 s 9 are each amended to read
6 as follows:

7 ~~((If any))~~ (1) The department may, by order, revoke the certificate
8 of registration of a taxpayer for any of the following reasons:

9 (a) A warrant issued under this chapter is not paid within thirty
10 days after it has been filed with the clerk of the superior court ~~((, or~~
11 ~~if any))~~;

12 (b) The taxpayer is delinquent, for three consecutive reporting
13 periods, in the transmission to the department ~~((of revenue of retail~~
14 ~~sales tax collected by the taxpayer, the department of revenue may, by~~
15 ~~order, revoke the certificate of registration of the taxpayer against~~
16 ~~whom the warrant was issued, and, if the order is entered, a copy~~
17 ~~thereof shall be posted in a conspicuous place at the main entrance to~~
18 ~~the taxpayer's place of business and shall remain posted until such~~

1 ~~time as the warrant has been paid. Any certificate so revoked shall~~
2 ~~not be reinstated, nor shall~~) of retail sales tax collected by the
3 taxpayer; or

4 (c)(i)(A) The taxpayer was convicted of violating RCW 82.32.290(4)
5 and continues to engage in business without fully complying with RCW
6 82.32.290(4)(b) (i) through (iii); or

7 (B) A person convicted of violating RCW 82.32.290(4) is an owner,
8 officer, director, partner, trustee, member, or manager of the
9 taxpayer, and the person and taxpayer have not fully complied with RCW
10 82.32.290(4)(b) (i) through (iii).

11 (ii) For the purposes of this subsection (1)(c), the terms
12 "manager," "member," and "officer" mean the same as defined in RCW
13 82.32.145.

14 (2) If the department enters a final order revoking a taxpayer's
15 certificate of registration, a copy of the order must, if practicable,
16 be posted in a conspicuous place at the main entrance to the taxpayer's
17 place of business. The department may also post a final order revoking
18 a taxpayer's certificate of registration in any public facility, such
19 as a courthouse or post office, as may be allowed by the public entity
20 that owns or occupies the facility. A final order posted at the
21 taxpayer's place of business must remain posted until such time as the
22 taxpayer is eligible to have its certificate of registration reinstated
23 as provided in subsection (3) of this section or has abandoned the
24 premises. A taxpayer will not be deemed to have abandoned the premises
25 if the taxpayer or any person with an ownership interest in the
26 taxpayer continues to operate a substantially similar type of business
27 under a different legal entity at the same location.

28 (3) Any certificate revoked under subsection (1) of this section
29 may not be reinstated, nor may a new certificate of registration be
30 issued to the taxpayer, until:

31 (a) The amount due on the warrant has been paid, or provisions for
32 payment satisfactory to the department (~~of revenue~~) have been
33 entered, and until the taxpayer has deposited with the department (~~of~~
34 revenue—such)) security for payment of any taxes, increases, and
35 penalties, due or which may become due in an amount and under such
36 terms and conditions as the department of revenue may require, but the
37 amount of the security (~~shall~~) may not be greater than one-half the
38 estimated average annual liability of the taxpayer; or

1 (b) The taxpayer and, if applicable, the owner, officer, director,
2 partner, trustee, member, or manager of the taxpayer who was convicted
3 of violating RCW 82.32.290(4) are in full compliance with RCW
4 82.32.290(4)(b) (i) through (iii), if the certificate of registration
5 was revoked under the provisions of subsection (1)(c) of this section.

6 **Sec. 2.** RCW 82.32.290 and 2010 c 112 s 11 are each amended to read
7 as follows:

8 (1)(a) It (~~shall be~~) is unlawful:

9 (i) For any person to engage in business without having obtained a
10 certificate of registration as provided in this chapter;

11 (ii) For the president, vice president, secretary, treasurer, or
12 other officer of any company to cause or permit the company to engage
13 in business without having obtained a certificate of registration as
14 provided in this chapter;

15 (iii) For any person to tear down or remove any order or notice
16 posted by the department in violation of this chapter;

17 (iv) For any person to aid or abet another in any attempt to evade
18 the payment of any tax or any part thereof;

19 (v) For any purchaser to fraudulently sign or furnish to a seller
20 documentation authorized under RCW 82.04.470 without intent to resell
21 the property purchased or with intent to otherwise use the property in
22 a manner inconsistent with the claimed wholesale purchase; or

23 (vi) For any person to fail or refuse to permit the examination of
24 any book, paper, account, record, or other data by the department or
25 its duly authorized agent; or to fail or refuse to permit the
26 inspection or appraisal of any property by the department or its duly
27 authorized agent; or to refuse to offer testimony or produce any record
28 as required.

29 (b) Any person violating any of the provisions of this subsection
30 (1) (~~shall be~~) is guilty of a gross misdemeanor in accordance with
31 chapter 9A.20 RCW.

32 (2)(a) It (~~shall be~~) is unlawful:

33 (i) For any person to engage in business after revocation of a
34 certificate of registration unless the person's certification of
35 registration has been reinstated;

36 (ii) For the president, vice president, secretary, treasurer, or

1 other officer of any company to cause or permit the company to engage
2 in business after revocation of a certificate of registration unless
3 the company's certificate of registration has been reinstated; or

4 (iii) For any person to make any false or fraudulent return or
5 false statement in any return, with intent to defraud the state or
6 evade the payment of any tax or part thereof.

7 (b) Any person violating any of the provisions of this subsection
8 (2) (~~shall be~~) is guilty of a class C felony in accordance with
9 chapter 9A.20 RCW.

10 (3) In addition to the foregoing penalties, any person who
11 knowingly swears to or verifies any false or fraudulent return, or any
12 return containing any false or fraudulent statement with the intent
13 aforesaid, (~~shall be~~) is guilty of the offense of perjury in the
14 second degree; and any company for which a false return, or a return
15 containing a false statement, as aforesaid, is made, (~~shall~~) must be
16 punished, upon conviction thereof, by a fine of not more than one
17 thousand dollars.

18 (4)(a) It is unlawful for any person to knowingly sell, purchase,
19 install, transfer, manufacture, create, design, update, repair, use,
20 possess, or otherwise make available, in this state, any automated
21 sales suppression device or phantom-ware. However, it is not unlawful
22 for persons to possess or use automated sales suppression devices or
23 phantom-ware as authorized in section 3(6) of this act.

24 (b) It is unlawful for any person who has been convicted of
25 violating this section to engage in business, or participate in any
26 business as an owner, officer, director, partner, trustee, member, or
27 manager of the business, unless:

28 (i) All taxes, penalties, and interest lawfully due are paid;

29 (ii) The person pays in full all penalties and fines imposed on the
30 person for violating this section; and

31 (iii) The person, if the person is engaging in business subject to
32 tax under this title, or the business in which the person participates,
33 enters into a written agreement with the department for the electronic
34 monitoring of the business's sales, by a method acceptable to the
35 department, for five years at the business's expense.

36 (c)(i) Any person violating the provisions of this subsection,
37 including material breach of the monitoring agreement under (b)(iii) of

1 this subsection, is guilty of a class C felony in accordance with
2 chapter 9A.20 RCW and, as applicable, (c)(ii) of this subsection.

3 (ii) Any person violating the provisions of this subsection by
4 furnishing an automated sales suppression device or phantom-ware to
5 another person or by updating or repairing another person's automated
6 sales suppression device or phantom-ware is, in addition to the
7 punishments prescribed in chapter 9A.20 RCW, subject to a mandatory
8 fine fixed by the court in an amount equal to the greater of ten
9 thousand dollars, the defendant's gain from the commission of the
10 crime, or the state's loss from the commission of the crime. For
11 purposes of this subsection (4)(c)(ii), "loss" means the total of all
12 taxes, penalties, and interest certified by the department to be due,
13 as of the date of sentencing, as a result of any violation of the
14 provisions of this subsection by a person using the automated sales
15 suppression device or phantom-ware obtained from, or updated or
16 repaired by, the defendant, which results in the defendant's conviction
17 for violating the provisions of this subsection.

18 (d) For the purposes of this subsection (4), the terms "manager,"
19 "member," and "officer" have the same meaning as in RCW 82.32.145.

20 (e) The definitions in section 3 of this act apply to this
21 subsection (4).

22 (5) All penalties or punishments provided in this section (~~shall~~
23 be)) are in addition to all other penalties provided by law.

24 NEW SECTION. Sec. 3. A new section is added to chapter 82.32 RCW
25 to read as follows:

26 (1)(a) Automated sales suppression devices, phantom-ware,
27 electronic cash registers or point of sale systems used with automated
28 sales suppression devices or phantom-ware, and any property
29 constituting proceeds traceable to any violation of RCW 82.32.290(4)
30 are considered contraband and are subject to seizure and forfeiture.

31 (b) Property subject to forfeiture under (a) of this subsection (1)
32 may be seized by any agent of the department authorized to assess or
33 collect taxes, or law enforcement officer of this state, upon process
34 issued by any superior court or district court having jurisdiction over
35 the property. Seizure without process may be made if:

36 (i) The seizure is incident to an arrest or a search under a search
37 warrant; or

1 (ii) The department or the law enforcement officer has probable
2 cause to believe that the property was used or is intended to be used
3 in violation of RCW 82.32.290(4) and exigent circumstances exist making
4 procurement of a search warrant impracticable.

5 (2) Forfeiture authorized by this section is deemed to have
6 commenced by the seizure. Notice of seizure must be given to the
7 department if the seizure is made by a law enforcement officer without
8 the presence of any agent of the department. The department must cause
9 notice of the seizure and intended forfeiture to be served on the owner
10 of the property seized, if known, and on any other person known by the
11 department to have a right or interest in the seized property. Such
12 service must be made within fifteen days following the seizure or the
13 department's receipt of notification of the seizure. The notice may be
14 served by any method authorized by law or court rule, by certified mail
15 with return receipt requested, or electronically in accordance with RCW
16 82.32.135. Service by certified mail or electronic means is deemed
17 complete upon mailing the notice, electronically sending the notice, or
18 electronically notifying the person or persons entitled to the notice
19 that the notice is available to be accessed by the person or persons,
20 within the fifteen-day period following the seizure or the department's
21 receipt of notification of the seizure.

22 (3) If no person notifies the department in writing of the person's
23 claim of lawful ownership or right to lawful possession of the item or
24 items seized within thirty days of the date of service of the notice of
25 seizure and intended forfeiture, the item or items seized are deemed
26 forfeited.

27 (4)(a) If any person notifies the department, in writing, of the
28 person's claim of lawful ownership or lawful right to possession of the
29 item or items seized within thirty days of the date of service of the
30 notice of seizure and intended forfeiture, the person or persons must
31 be afforded a reasonable opportunity to be heard as to the claim. The
32 hearing must be before the director or the director's designee. A
33 hearing and any administrative or judicial review is governed by
34 chapter 34.05 RCW. The burden of proof by a preponderance of the
35 evidence is upon the person claiming to be the lawful owner or the
36 person claiming to have the lawful right to possession of the item or
37 items seized.

1 (b) The department must return the item or items to the claimant as
2 soon as possible upon a determination that the claimant is the present
3 lawful owner or is lawfully entitled to possession of the item or items
4 seized.

5 (5) When property is sought to be forfeited on the ground that it
6 constitutes proceeds traceable to a violation of RCW 82.32.290(4), the
7 department must prove by a preponderance of the evidence that the
8 property constitutes proceeds traceable to a violation of RCW
9 82.32.290(4).

10 (6)(a) When property forfeited under this section, other than
11 proceeds traceable to a violation of RCW 82.32.290(4), is no longer
12 required for evidentiary purposes, the department may:

13 (i) Destroy or have the property destroyed;

14 (ii) Retain the property for training or other official purposes;

15 or

16 (iii) Loan or give the property to any law enforcement or tax
17 administration agency of any state, political subdivision or municipal
18 corporation of a state, or the United States for training or other
19 official purposes. For purposes of this subsection (6)(a)(iii),
20 "state" has the same meaning as in RCW 82.04.462.

21 (b) When proceeds traceable to a violation of RCW 82.32.290(4)
22 forfeited under this section are no longer required for evidentiary
23 purposes, they must be deposited into the general fund.

24 (7) The definitions in this subsection apply to this section:

25 (a) "Automated sales suppression device" means a software program
26 that falsifies the electronic records of electronic cash registers or
27 other point of sale systems, including transaction data and transaction
28 reports. The term includes the software program, any device that
29 carries the software program, or an internet link to the software
30 program.

31 (b) "Electronic cash register" means a device that keeps a register
32 or supporting documents through the means of an electronic device or
33 computer system designed to record transaction data for the purpose of
34 computing, compiling, or processing sales transaction data in whatever
35 manner.

36 (c) "Phantom-ware" means a programming option that is hidden,
37 preinstalled, or installed-at-a-later-time in the operating system of
38 an electronic cash register or other point of sale device, or hardwired

1 into the electronic cash register or other point of sale device, and
2 that can be used to create a virtual second till or may eliminate or
3 manipulate transaction reports that may or may not be preserved in
4 digital formats to represent the true or manipulated record of
5 transactions in the electronic cash register or other point of sale
6 device.

7 (d) "Transaction data" means information about sales transactions,
8 including items purchased by a customer, the price for each item, a
9 taxability determination for each item, a segregated tax amount for
10 each of the taxed items, the amount of cash or credit tendered, the net
11 amount returned to the customer in change, the date and time of the
12 purchase, the name, address, and identification number of the vendor,
13 and the receipt or invoice number of the transaction.

14 (e) "Transaction reports" means a report that includes information
15 associated with sales transactions, taxes collected, media totals, and
16 discount voids at an electronic cash register that can be printed on
17 cash register tape at the end of a day or shift, or a report
18 documenting every action at an electronic cash register or other point
19 of sale device and that is stored electronically.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW
21 to read as follows:

22 When the department has good reason to believe that any property
23 subject to seizure and forfeiture under section 3 of this act is being
24 used or maintained in this state in violation of RCW 82.32.290(4)(a),
25 the department may make affidavit of facts describing the place or
26 thing to be searched before any judge of any superior or district court
27 in this state. The judge may issue a search warrant directed to a law
28 enforcement officer or agent of the department authorized under section
29 3 of this act to seize contraband, commanding him or her to diligently
30 search any place or thing as designated in the affidavit and search
31 warrant, and to seize such suspected contraband and hold it until
32 disposed of as provided by section 3 of this act.

33 NEW SECTION. **Sec. 5.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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