
SENATE BILL 5560

State of Washington 52nd Legislature 1991 Regular Session

By Senators McDonald, Owen, Craswell and Niemi.

Read first time February 7, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to enforcement of cigarette and tobacco statutes;
2 amending RCW 66.28.090, 66.44.010, 66.44.370, 82.24.010, 82.24.027,
3 82.24.030, 82.24.040, 82.24.050, 82.24.070, 82.24.090, 82.24.110,
4 82.24.120, 82.24.130, 82.24.135, 82.24.145, 82.24.180, 82.24.190,
5 82.24.210, 82.24.230, 82.24.250, 82.24.510, 82.24.520, 82.24.550,
6 82.24.560, 82.26.010, 82.26.050, 82.26.060, 82.26.080, 82.26.090,
7 82.26.110, and 82.26.120; adding new sections to chapter 82.24 RCW;
8 adding a new section to chapter 82.26 RCW; adding a new section to
9 chapter 82.32 RCW; creating new sections; repealing RCW 82.24.260;
10 providing an effective date; and declaring an emergency.

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

12 **Sec. 1.** RCW 66.28.090 and 1981 1st ex.s. c 5 s 20 are each amended
13 to read as follows:

14 (1) All licensed premises used in the manufacture, storage, or sale
15 of liquor, or any premises or parts of premises used or in any way

1 connected, physically or otherwise, with the licensed business, and/or
2 any premises where a banquet permit has been granted, shall at all
3 times be open to inspection by any liquor and tobacco enforcement
4 officer, inspector, or peace officer.

5 (2) Every person, being on any such premises and having charge
6 thereof, who refuses or fails to admit a liquor and tobacco enforcement
7 officer, inspector, or peace officer demanding to enter therein in
8 pursuance of this section in the execution of (~~his/her~~) his or her
9 duty, or who obstructs or attempts to obstruct the entry of such liquor
10 and tobacco enforcement officer, inspector, or officer of the peace, or
11 who refuses to allow a liquor and tobacco enforcement officer, and/or
12 an inspector to examine the books of the licensee, or who refuses or
13 neglects to make any return required by this title or the
14 (~~regulations~~) rules, shall be guilty of a violation of this title.

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

17 (1) All county and municipal peace officers are hereby charged with
18 the duty of investigating and prosecuting all violations of this title,
19 and the penal laws of this state relating to the manufacture,
20 importation, transportation, possession, distribution, and sale of
21 liquor, and all fines imposed for violations of this title and the
22 penal laws of this state relating to the manufacture, importation,
23 transportation, possession, distribution, and sale of liquor shall
24 belong to the county, city, or town wherein the court imposing the fine
25 is located, and shall be placed in the general fund for payment of the
26 salaries of those engaged in the enforcement of the provisions of this
27 title and the penal laws of this state relating to the manufacture,
28 importation, transportation, possession, distribution, and sale of
29 liquor: PROVIDED, That all fees, fines, forfeitures, and penalties

1 collected or assessed by a district court because of the violation of
2 a state law shall be remitted as provided in chapter 3.62 RCW as now
3 exists or is later amended.

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

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

10 (4) The board may appoint and employ, assign to duty and fix the
11 compensation of, officers to be designated as liquor and tobacco
12 enforcement officers. Such (~~liquor~~) enforcement officers shall have
13 the power, under the supervision of the board, to enforce the penal
14 provisions of this title and the penal laws of this state relating to
15 the manufacture, importation, transportation, possession, distribution,
16 and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW
17 relating to cigarettes and tobacco. They shall have the power and
18 authority to serve and execute all warrants and process of law issued
19 by the courts in enforcing the penal provisions of this title or of any
20 penal law of this state relating to the manufacture, importation,
21 transportation, possession, distribution, and sale of liquor, and the
22 provisions of chapters 82.24 and 82.26 RCW relating to cigarettes and
23 tobacco. They shall have the power to arrest without a warrant any
24 person or persons found in the act of violating any of the penal
25 provisions of this title or of any penal law of this state relating to
26 the manufacture, importation, transportation, possession, distribution,
27 and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW
28 relating to cigarettes and tobacco.

1 **Sec. 3.** RCW 66.44.370 and 1981 1st ex.s. c 5 s 27 are each amended
2 to read as follows:

3 No person shall knowingly or willfully resist or oppose any state,
4 county, or municipal peace officer, or liquor and tobacco enforcement
5 officer, in the discharge of ((his/her)) his or her duties under Title
6 66 RCW, or aid and abet such resistance or opposition. Any person who
7 violates this section shall be guilty of a violation of this title and
8 subject to arrest by any such officer.

9 **Sec. 4.** RCW 82.24.010 and 1961 c 15 s 82.24.010 are each amended
10 to read as follows:

11 For the purposes of this chapter, unless otherwise required by the
12 context:

13 (1) "Wholesaler" means every person who purchases, sells, or
14 distributes any one or more of the articles taxed herein to retailers
15 for the purpose of resale only;

16 (2) "Retailer" means every person, other than a wholesaler, who
17 purchases, sells, offers for sale, or distributes any one or more of
18 the articles taxed herein, irrespective of quantity or amount, or the
19 number of sales, and all persons operating under a retailer's
20 registration certificate;

21 (3) (~~"Retail selling price" means the ordinary, customary or usual~~
22 ~~price paid by the consumer for each package of cigarettes, the tax~~
23 ~~levied by this chapter and tax levied by this state;~~

24 (4)) "Cigarette" means any roll for smoking made wholly or in part
25 of tobacco, irrespective of size or shape and irrespective of the
26 tobacco being flavored, adulterated, or mixed with any other
27 ingredient, where such roll has a wrapper or cover made of paper or any
28 material, except where such wrapper is wholly or in the greater part
29 made of natural leaf tobacco in its natural state;

1 (~~(5)~~) (4) "Stamp" means the stamp or stamps or meter impressions
2 by use of which the tax levy under this chapter is paid;

3 (5) "Board" means the liquor control board;

4 (6) The meaning attributed, in chapter 82.04 RCW, to the words
5 "person," "sale," "business," and "successor" shall apply equally in
6 the provisions of this chapter.

7 **Sec. 5.** RCW 82.24.027 and 1986 c 3 s 12 are each amended to read
8 as follows:

9 There is hereby levied and there shall be collected by the
10 (~~(department of revenue)~~) board from the persons mentioned in and in
11 the manner provided by this chapter, an additional tax upon the sale,
12 use, consumption, handling, possession, or distribution of cigarettes
13 in an amount equal to the rate of four mills per cigarette.

14 The moneys collected under this section shall be deposited in the
15 water quality account under RCW 70.146.030 through June 30, 2021, and
16 in the general fund thereafter.

17 **Sec. 6.** RCW 82.24.030 and 1990 c 216 s 1 are each amended to read
18 as follows:

19 In order to enforce collection of the tax hereby levied, the
20 (~~(department of revenue)~~) board shall design and have printed stamps of
21 such size and denominations as may be determined by the (~~(department)~~)
22 board, such stamps to be affixed on the smallest container or package
23 that will be handled, sold, used, consumed, or distributed, to permit
24 the (~~(department)~~) board to readily ascertain by inspection, whether or
25 not such tax has been paid. Except as otherwise provided in this
26 chapter, every person shall cause to be affixed on every package of
27 cigarettes, stamps of an amount equaling the tax due thereon before he
28 or she sells, offers for sale, uses, consumes, handles, removes, or

1 otherwise disturbs and distributes the same: PROVIDED, That where it
2 is established to the satisfaction of the ((department)) board that it
3 is impractical to affix such stamps to the smallest container or
4 package, the ((department)) board may authorize the affixing of stamps
5 of appropriate denomination to a large container or package.

6 The ((department)) board may authorize the use of meter stamping
7 machines for imprinting stamps, which imprinted stamps shall be in lieu
8 of those otherwise provided for under this chapter, and if such use is
9 authorized, shall provide reasonable rules ((and regulations)) with
10 respect thereto.

11 **Sec. 7.** RCW 82.24.040 and 1990 c 216 s 2 are each amended to read
12 as follows:

13 No wholesaler in this state may possess within this state unstamped
14 cigarettes except that:

15 (1) Every wholesaler in the state who is licensed under Washington
16 state law may possess within this state unstamped cigarettes for such
17 period of time after receipt as is reasonably necessary to affix the
18 stamps as required; and

19 (2) Any wholesaler in the state who is licensed under Washington
20 state law and who furnishes a surety bond in a sum satisfactory to the
21 ((department)) board, shall be permitted to set aside, without affixing
22 the stamps required by this chapter, such part of ((his)) the
23 wholesaler's stock as may be necessary for the conduct of ((his)) the
24 wholesaler's business in making sales to persons in another state or
25 foreign country, to instrumentalities of the federal government, or to
26 the established governing bodies of any Indian tribe, recognized as
27 such by the United States Department of the Interior. Such unstamped
28 stock shall be kept separate and apart from stamped stock.

1 (3) Every wholesaler licensed under Washington state law shall, at
2 the time of shipping or delivering any of the articles taxed herein to
3 a point outside of this state, or to a federal instrumentality, or to
4 an Indian tribal organization, make a true duplicate invoice of the
5 same which shall show full and complete details of the sale or
6 delivery, whether or not stamps were affixed thereto, and shall
7 transmit such true duplicate invoice to the main office of the
8 ((department)) board, at Olympia, not later than the fifteenth day of
9 the following calendar month, and for failure to comply with the
10 requirements of this section the ((department)) board may revoke the
11 permission granted to the taxpayer to maintain a stock of goods to
12 which the stamps required by this chapter have not been affixed. The
13 ((department)) board may also revoke this permission to maintain a
14 stock of unstamped goods for sale to a specific Indian tribal
15 organization when it appears that sales of unstamped cigarettes to
16 persons who are not enrolled members of a recognized Indian tribe are
17 taking place, or have taken place, within the exterior boundaries of
18 the reservation occupied by that tribe.

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

21 A person who provides information or proof of a violation of this
22 chapter that leads to the arrest and conviction of any person may be
23 compensated in an amount determined by the board, but not to exceed one
24 thousand dollars.

25 **Sec. 9.** RCW 82.24.050 and 1990 c 216 s 3 are each amended to read
26 as follows:

27 ((No)) Every retailer ((in this state may possess unstamped
28 cigarettes within this state unless the retailer is licensed under

1 Washington state law and, within a period of time after receipt of any
2 of the articles taxed herein as is reasonably necessary for the
3 purpose, causes the same to have the requisite denomination and amount
4 of stamps affixed to represent the tax imposed herein: PROVIDED, That
5 those articles to which stamps have been properly affixed by a
6 wholesaler or another retailer, licensed under Washington state law,
7 may be retained by any retailer, and that those articles intended for
8 sale to qualified purchasers may, under rules adopted by the department
9 of revenue, be retained by federal instrumentalities and Indian tribal
10 organizations, without affixing the stamps required by this chapter))
11 shall purchase cigarettes with the stamps affixed.

12 **Sec. 10.** RCW 82.24.070 and 1987 c 496 s 5 are each amended to read
13 as follows:

14 Wholesalers ((and retailers)) subject to the provisions of this
15 chapter shall be allowed compensation for their services in affixing
16 the stamps herein required a sum computed at the rate of four dollars
17 per one thousand stamps purchased or affixed by them.

18 **Sec. 11.** RCW 82.24.090 and 1975 1st ex.s. c 278 s 62 are each
19 amended to read as follows:

20 Every wholesaler or retailer subject to the provisions of this
21 chapter shall keep and preserve for a period of five years an accurate
22 set of records, showing all transactions had with reference to the
23 purchase and sale of any of the articles taxed herein and such persons
24 shall also keep separately all invoices, and shall keep a record of all
25 stamps purchased, and all such records and all stock of taxable
26 articles on hand shall be open to inspection at all reasonable times by
27 the ((department of revenue)) board or its duly authorized agent.

1 All wholesalers shall within fifteen days after the first day of
2 each month file with the (~~department of revenue~~) board a report of
3 all drop shipment sales made by them to retailers within this state
4 during the preceding month, which report shall show the name and
5 address of the retailer to whom the cigarettes were sold, the kind and
6 quantity, and the date of delivery thereof.

7 **Sec. 12.** RCW 82.24.110 and 1990 c 216 s 4 are each amended to read
8 as follows:

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

11 (a) To sell, except as a licensed wholesaler or licensed retailer
12 engaged in interstate commerce as to the article being taxed herein,
13 without the stamp first being affixed;

14 (b) To use or have in possession knowingly or intentionally any
15 forged or counterfeit stamps;

16 (c) For any person other than the (~~department of revenue~~) board
17 or its duly authorized agent to sell any stamps not affixed to any of
18 the articles taxed herein whether such stamps are genuine or
19 counterfeit;

20 (d) To violate any of the provisions of this chapter;

21 (e) To violate any lawful rule (~~or regulation~~) made and published
22 by the (~~department of revenue~~) board;

23 (f) To use any stamps more than once;

24 (g) To refuse to allow the (~~department of revenue~~) board or any
25 duly authorized agent thereof, on demand, to make full inspection of
26 any place of business where any of the articles herein taxed are sold
27 or otherwise hinder or prevent such inspection;

28 (h) For any retailer(~~(, except one permitted to maintain an~~
29 ~~unstamped stock to engage in interstate business as provided herein,)~~)

1 to have in possession in any place of business any of the articles
2 herein taxed, unless the same have the proper stamps attached;

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

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

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

22 (l) For any person to possess or transport upon the public
23 highways, roads, or streets of this state a quantity of sixty thousand
24 cigarettes or less (~~unless the proper stamps required by this chapter~~
25 ~~have been affixed~~) that are unstamped, untaxed, or untaxed stamped
26 cigarettes or unless the person transporting the cigarettes has in
27 actual possession invoices or delivery tickets therefor which show the
28 true name and address of the consignor or seller, the true name of the
29 consignee or purchaser, and the quantity and brands of the cigarettes
30 so transported and unless the cigarettes are consigned to or purchased

1 by any person in this state who is a purchaser or consignee authorized
2 by this chapter to possess unstamped, untaxed, or untaxed stamped
3 cigarettes in this state.

4 (2) It is unlawful for any person knowingly or intentionally to
5 possess or to transport upon the public highways, roads, or streets of
6 this state a quantity in excess of sixty thousand cigarettes ((unless
7 the proper stamps required by this chapter are affixed thereto or))
8 that are unstamped, untaxed, or untaxed stamped cigarettes unless the
9 person transporting the cigarettes actually possesses invoices or
10 delivery tickets showing the true name and address of the consignor or
11 seller, the true name of the consignee or purchaser, and the quantity
12 and brands of the cigarettes so transported. Violation of this section
13 shall be punished as a class C felony under Title 9A RCW.

14 (3) All agents, employees, and others who aid, abet, or otherwise
15 participate in any way in the violation of the provisions of this
16 chapter or in any of the offenses described in this chapter shall be
17 guilty and punishable as principals, to the same extent as any
18 wholesaler or retailer or any other person violating the provisions
19 thereof.

20 **Sec. 13.** RCW 82.24.120 and 1990 c 267 s 1 are each amended to read
21 as follows:

22 If any person, subject to the provisions of this chapter or any
23 rules ((and regulations)) promulgated by the ((department of revenue))
24 board under authority hereof, is found to have failed to affix the
25 stamps required, or to have them affixed as herein provided, or to pay
26 any tax due hereunder, or to have violated any of the provisions of
27 this chapter or rules ((and regulations)) promulgated by the
28 ((department of revenue)) board in the administration hereof, there
29 shall be assessed and collected from such person, in addition to any

1 tax that may be found due, a penalty equal to the greater of ten
2 dollars per package of unstamped cigarettes or two hundred fifty
3 dollars, plus interest thereon at the rate of one percent for each
4 thirty days or portions thereof from the date the tax became due, and
5 upon notice mailed to the last known address of the person said amount
6 shall become due and payable in ten days, at which time the
7 ((department)) board or its duly authorized agent may make immediate
8 demand upon such person for the payment of all such taxes and
9 penalties. The ((department)) board, for good reason shown, may remit
10 all or any part of penalties imposed, but the taxpayer must pay all
11 taxes due and interest thereon, at the rate of one percent for each
12 thirty days or portion thereof. The keeping of any unstamped, untaxed,
13 or untaxed stamped articles coming within the provisions of this
14 chapter shall be prima facie evidence of intent to violate the
15 provisions of this chapter.

16 **Sec. 14.** RCW 82.24.130 and 1990 c 216 s 5 are each amended to read
17 as follows:

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

19 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
20 that are found at any point within this state, which articles are held,
21 owned, or possessed by any person, and that ((do not have the stamps
22 affixed to the packages or containers)) are unstamped, untaxed, or
23 untaxed and stamped.

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

28 (i) A conveyance used by any person as a common or contract carrier
29 having in actual possession invoices or delivery tickets showing the

1 true name and address of the consignor or seller, the true name of the
2 consignee or purchaser, and the quantity and brands of the cigarettes
3 transported, unless it appears that the owner or other person in charge
4 of the conveyance is a consenting party or privy to a violation of this
5 chapter;

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

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

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

14 (2) Property subject to forfeiture under this chapter may be seized
15 by any agent of the ((department)) board authorized to collect taxes or
16 law enforcement officer of this state upon process issued by any
17 superior court or district court having jurisdiction over the property.
18 Seizure without process may be made if:

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

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

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

1 **Sec. 15.** RCW 82.24.135 and 1987 c 496 s 3 are each amended to read
2 as follows:

3 In all cases of seizure of any property made subject to forfeiture
4 under this chapter the ((department)) board shall proceed as follows:

5 (1) Forfeiture shall be deemed to have commenced by the seizure.
6 Notice of seizure shall be given to the ((department)) board
7 immediately if the seizure is made by someone other than an agent of
8 the ((department)) board authorized to collect taxes.

9 (2) Upon notification or seizure by the ((department)) board or
10 upon receipt of property subject to forfeiture under this chapter from
11 any other person, the ((department)) board shall list and particularly
12 describe the property seized in duplicate and have the property
13 appraised by a qualified person not employed by the ((department))
14 board or acting as its agent. Listing and appraisal of the property
15 shall be properly attested by the ((department)) board and the
16 appraiser, who shall be allowed a reasonable appraisal fee. No
17 appraisal is required if the property seized is judged by the
18 ((department)) board to be less than one hundred dollars in value.

19 (3) The ((department)) board shall cause notice to be served within
20 five days following the seizure or notification to the ((department))
21 board of the seizure on the owner of the property seized, if known, on
22 the person in charge thereof, and on any other person having any known
23 right or interest therein, of the seizure and intended forfeiture of
24 the seized property. The notice may be served by any method authorized
25 by law or court rule including but not limited to service by mail. If
26 service is by mail it shall be by both certified mail with return
27 receipt requested and regular mail. Service by mail shall be deemed
28 complete upon mailing within the five-day period following the seizure
29 or notification of the seizure to the ((department)) board.

1 (4) If no person notifies the ((department)) board in writing of
2 the person's claim of ownership or right to possession of the items
3 seized within fifteen days of the date of the notice of seizure, the
4 item seized shall be considered forfeited.

5 (5) If any person notifies the ((department)) board, in writing, of
6 the person's claim of ownership or right to possession of the items
7 seized within fifteen days of the date of the notice of seizure, the
8 person or persons shall be afforded a reasonable opportunity to be
9 heard as to the claim or right. The hearing shall be before the
10 ((director)) board or the ((director's)) board's designee, except that
11 any person asserting a claim or right may bring an action for return of
12 the seized items in the superior court of the county in which such
13 property was seized, if the aggregate value of the article or articles
14 involved is more than five hundred dollars. A hearing before the
15 seizing agency and any appeal therefrom shall be in accordance with
16 chapter 34.05 RCW. The burden of proof by a preponderance of the
17 evidence shall be upon the person claiming to be the lawful owner or
18 the person claiming to have the lawful right to possession of the items
19 seized. The ((department)) board shall promptly return the article or
20 articles to the claimant upon a determination that the claimant is the
21 present lawful owner or is lawfully entitled to possession thereof of
22 the items seized.

23 **Sec. 16.** RCW 82.24.145 and 1987 c 496 s 4 are each amended to read
24 as follows:

25 When property is forfeited under this chapter the ((department))
26 board may:

27 (1) Retain the property or any part thereof for official use or
28 upon application by any law enforcement agency of this state, another
29 state, or the District of Columbia, or of the United States for the

1 exclusive use of enforcing the provisions of this chapter or the laws
2 of any other state or the District of Columbia or of the United States.

3 (2) Sell the property at public auction to the highest bidder after
4 due advertisement, but the ((department)) board before delivering any
5 of the goods so seized shall require the person to whom the property is
6 sold to affix the proper amount of stamps. The proceeds of the sale
7 and all moneys forfeited under this chapter shall be first applied to
8 the payment of all proper expenses of any investigation leading to the
9 seizure and of the proceedings for forfeiture and sale, including
10 expenses of seizure, maintenance of custody, advertising, and court
11 costs. The balance of the proceeds and all moneys shall be deposited
12 in the general fund of the state. Proper expenses of investigation
13 includes costs incurred by any law enforcement agency or any federal,
14 state, or local agency.

15 **Sec. 17.** RCW 82.24.180 and 1990 c 267 s 2 are each amended to read
16 as follows:

17 The ((~~department of revenue~~)) board may return any property seized
18 under the provisions of this chapter when it is shown that there was no
19 intention to violate the provisions thereof.

20 When any property is returned under this section, the
21 ((department)) board may return such goods to the parties from whom
22 they were seized if and when such parties affix the proper amount of
23 stamps thereto, and pay to the ((department)) board as penalty an
24 amount equal to the greater of ten dollars per package of unstamped
25 cigarettes or two hundred fifty dollars, and interest thereon at the
26 rate of one percent for each thirty days or portion thereof from the
27 date the tax became due, and in such cases, no advertisement shall be
28 made or notices posted in connection with said seizure.

1 **Sec. 18.** RCW 82.24.190 and 1987 c 202 s 244 are each amended to
2 read as follows:

3 When the ((~~department of revenue~~)) board has good reason to believe
4 that any of the articles taxed herein are being kept, sold, offered for
5 sale, or given away in violation of the provisions of this chapter or
6 ((~~regulations~~)) rules issued under authority hereof, it may make
7 affidavit of such fact, describing the place or thing to be searched,
8 before any judge of any court in this state, and such judge shall issue
9 a search warrant directed to the sheriff, any deputy, police officer,
10 or duly authorized agent of the ((~~department of revenue~~)) board
11 commanding him or her diligently to search any building, room in a
12 building, place, or vehicle as may be designated in the affidavit and
13 search warrant, and to seize such tobacco so possessed and to hold the
14 same until disposed of by law, and to arrest the person in possession
15 or control thereof. If upon the return of such warrant, it shall appear
16 that any of the articles taxed herein, unlawfully possessed, were
17 seized, the same shall be sold as provided in this chapter.

18 **Sec. 19.** RCW 82.24.210 and 1975 1st ex.s. c 278 s 68 are each
19 amended to read as follows:

20 The ((~~department of revenue~~)) board may promulgate rules ((~~and~~
21 ~~regulations~~)) providing for the refund to dealers for the cost of
22 stamps affixed to articles taxed herein, which by reason of damage
23 become unfit for sale and are destroyed by the dealer or returned to
24 the manufacturer or jobber. In the case of any articles to which
25 stamps have been affixed, and which articles have been sold and shipped
26 to a regular dealer in such articles in another state, the seller in
27 this state shall be entitled to a refund of the actual amount of the
28 stamps so affixed, less the affixing discount, upon condition that the
29 seller in this state makes affidavit that the articles were sold and

1 shipped outside of the state and that ((he)) the seller has received
2 from the purchaser outside the state a written acknowledgment that
3 ((he)) the purchaser has received such articles with the amount of
4 stamps affixed thereto, together with the name and address of such
5 purchaser. The ((department of revenue)) board may redeem any unused
6 stamps purchased from it at the face value thereof less the affixing
7 discount.

8 **Sec. 20.** RCW 82.24.230 and 1961 c 15 s 82.24.230 are each amended
9 to read as follows:

10 All of the provisions contained in chapter 82.32 RCW except RCW
11 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270 shall have
12 full force and application with respect to taxes imposed under the
13 provisions of this chapter(~~(, except the following sections thereof:~~
14 ~~RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100 and 82.32.270)~~); except
15 that "department of revenue" or "department" means the liquor control
16 board.

17 **Sec. 21.** RCW 82.24.250 and 1990 c 216 s 6 are each amended to read
18 as follows:

19 No person other than (1) a licensed wholesaler in its own vehicle,
20 or (2) a person who has given notice to the ((department)) board in
21 advance of the commencement of transportation shall transport or cause
22 to be transported unstamped, untaxed, or untaxed stamped cigarettes
23 ~~((not having the stamps affixed to the packages or containers))~~, upon
24 the public highways, roads, or streets of this state. In the case of
25 transportation of unstamped cigarettes such persons shall have in their
26 actual possession invoices or delivery tickets for such cigarettes,
27 which shall show the true name and address of the consignor or seller,
28 the true name of the consignee or purchaser, and the quantity and

1 brands of the cigarettes so transported. If the cigarettes are
2 consigned to or purchased by any person in this state such purchaser or
3 consignee must be a person who is authorized by chapter 82.24 RCW to
4 possess unstamped, untaxed, or untaxed stamped cigarettes in this
5 state. In the absence of such invoices or delivery tickets, or, if the
6 name or address of the consignee or purchaser is falsified or if the
7 purchaser or consignee is not authorized by chapter 82.24 RCW to
8 possess unstamped, untaxed, or untaxed stamped cigarettes, the
9 cigarettes so transported shall be deemed contraband subject to seizure
10 and sale under the provisions of RCW 82.24.130.

11 Transportation of cigarettes from a point outside this state to a
12 point in some other state will not be considered a violation of this
13 section provided that the person so transporting such cigarettes has in
14 his or her possession adequate invoices or delivery tickets which give
15 the true name and address of such out-of-state seller or consignor and
16 such out-of-state purchaser or consignee.

17 In any case where the ~~((department))~~ board or its duly authorized
18 agent, or any peace officer of the state, has knowledge or reasonable
19 grounds to believe that any vehicle is transporting cigarettes in
20 violation of this section, the ~~((department))~~ board, such agent, or
21 such police officer, is authorized to stop such vehicle and to inspect
22 the same for contraband cigarettes.

23 For purposes of this section, the term "person authorized by
24 chapter 82.24 RCW to possess unstamped, untaxed, or untaxed stamped
25 cigarettes" shall mean a wholesaler or retailer, licensed under
26 Washington state law, the United States or an agency thereof, and any
27 Indian tribal organization authorized under rules adopted by the
28 ~~((department of revenue))~~ board to possess ~~((unstamped cigarettes))~~
29 these articles.

1 **Sec. 22.** RCW 82.24.510 and 1986 c 321 s 5 are each amended to read
2 as follows:

3 (1) The licenses issuable under this chapter are as follows:

4 (a) A wholesaler's license.

5 (b) A retailer's license.

6 (c) A vending machine license.

7 (2) Application for the licenses shall be made through the master
8 license system under chapter 19.02 RCW. The ~~((department of revenue))~~
9 board shall adopt rules regarding the regulation of the licenses. The
10 ~~((department of revenue))~~ board may refrain from the issuance of any
11 license under this chapter if the ~~((department))~~ board has reasonable
12 cause to believe that the applicant has willfully withheld information
13 requested for the purpose of determining the eligibility of the
14 applicant to receive a license, or if the ~~((department))~~ board has
15 reasonable cause to believe that information submitted in the
16 application is false or misleading or is not made in good faith. Each
17 such license shall expire on the master license expiration date, and
18 each such license shall be continued annually if the licensee has paid
19 the required fee and complied with all the provisions of this chapter
20 and the rules of the ~~((department of revenue))~~ board made pursuant
21 thereto.

22 **Sec. 23.** RCW 82.24.520 and 1986 c 321 s 6 are each amended to read
23 as follows:

24 A fee of six hundred fifty dollars shall accompany each
25 wholesaler's license application or license renewal application. If a
26 wholesaler sells or intends to sell cigarettes at two or more places of
27 business, whether established or temporary, a separate license with a
28 license fee of one hundred fifteen dollars shall be required for each
29 additional place of business. Each license, or certificate thereof,

1 and such other evidence of license as the (~~department of revenue~~)
2 board requires, shall be exhibited in the place of business for which
3 it is issued and in such manner as is prescribed for the display of a
4 master license. The (~~department of revenue~~) board shall require each
5 licensed wholesaler to file with the (~~department~~) board a bond in an
6 amount not less than (~~one~~) five thousand dollars to guarantee the
7 proper performance of the duties and the discharge of the liabilities
8 under this chapter. The bond shall be executed by such licensed
9 wholesaler as principal, and by a corporation approved by the
10 (~~department of revenue~~) board and authorized to engage in business as
11 a surety company in this state, as surety. The bond shall run
12 concurrently with the wholesaler's license.

13 **Sec. 24.** RCW 82.24.550 and 1986 c 321 s 9 are each amended to read
14 as follows:

15 (1) The (~~department of revenue~~) board shall enforce the
16 provisions of this chapter. The (~~department of revenue~~) board may
17 adopt, amend, and repeal rules necessary to enforce and administer the
18 provisions of this chapter. The (~~department of revenue~~) board has
19 full power and authority to revoke or suspend the license or permit of
20 any wholesale or retail cigarette dealer in the state upon sufficient
21 cause appearing of the violation of this chapter or upon the failure of
22 such licensee to comply with any of the provisions of this chapter.

23 (2) A license shall not be suspended or revoked except upon notice
24 to the licensee and after a hearing as prescribed by the (~~department~~
25 ~~of revenue~~) board. The (~~department of revenue~~) board, upon a
26 finding by same, that the licensee has failed to comply with any
27 provision of this chapter or any rule promulgated thereunder, shall, in
28 the case of the first offender, suspend the license or licenses of the
29 licensee for a period of not less than thirty consecutive business

1 days, and, in the case of a second or plural offender, shall suspend
2 the license or licenses for a period of not less than ninety
3 consecutive business days nor more than twelve months, and, in the
4 event the ((department of revenue)) board finds the offender has been
5 guilty of willful and persistent violations, it may revoke the license
6 or licenses.

7 (3) Any person whose license or licenses have been so revoked may
8 apply to the ((department of revenue)) board at the expiration of one
9 year for a reinstatement of the license or licenses. The license or
10 licenses may be reinstated by the ((department of revenue)) board if it
11 appears to the satisfaction of the ((department of revenue)) board that
12 the licensee will comply with the provisions of this chapter and the
13 rules promulgated thereunder.

14 (4) A person whose license has been suspended or revoked shall not
15 sell cigarettes or permit cigarettes to be sold during the period of
16 such suspension or revocation on the premises occupied by the person or
17 upon other premises controlled by the person or others or in any other
18 manner or form whatever.

19 (5) Any determination and order by the ((department of revenue))
20 board, and any order of suspension or revocation by the ((department of
21 revenue)) board of the license or licenses, or refusal to reinstate a
22 license or licenses after revocation shall be reviewable by an appeal
23 to the superior court of Thurston county. The superior court shall
24 review the order or ruling of the ((department of revenue)) board and
25 may hear the matter de novo, having due regard to the provisions of
26 this chapter and the duties imposed upon the ((department of revenue))
27 board.

28 **Sec. 25.** RCW 82.24.560 and 1986 c 321 s 10 are each amended to
29 read as follows:

1 All fees and penalties received or collected by the (~~department of~~
2 ~~revenue~~) board pursuant to this chapter shall be paid to the state
3 treasurer, to be credited to the general fund.

4 NEW SECTION. Sec. 26. A new section is added to chapter 82.24 RCW
5 to read as follows:

6 The board may adopt rules to implement this chapter.

7 **Sec. 27.** RCW 82.26.010 and 1975 1st ex.s. c 278 s 70 are each
8 amended to read as follows:

9 As used in this chapter:

10 (1) "Tobacco products" means cigars, cheroots, stogies, periques,
11 granulated, plug cut, crimp cut, ready rubbed, and other smoking
12 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
13 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
14 cuttings, and sweepings of tobacco, and other kinds and forms of
15 tobacco, prepared in such manner as to be suitable for chewing or
16 smoking in a pipe or otherwise, or both for chewing and smoking, but
17 shall not include cigarettes as defined in RCW 82.24.010(~~(+4)~~);

18 (2) "Manufacturer" means a person who manufactures and sells
19 tobacco products;

20 (3) "Distributor" means (a) any person engaged in the business of
21 selling tobacco products in this state who brings, or causes to be
22 brought, into this state from without the state any tobacco products
23 for sale, (b) any person who makes, manufactures, or fabricates tobacco
24 products in this state for sale in this state, (c) any person engaged
25 in the business of selling tobacco products without this state who
26 ships or transports tobacco products to retailers in this state, to be
27 sold by those retailers;

1 (4) "Subjobber" means any person, other than a manufacturer or
2 distributor, who buys tobacco products from a distributor and sells
3 them to persons other than the ultimate consumers;

4 (5) "Retailer" means any person engaged in the business of selling
5 tobacco products to ultimate consumers;

6 (6) "Sale" means any transfer, exchange, or barter, in any manner
7 or by any means whatsoever, for a consideration, and includes and means
8 all sales made by any person. It includes a gift by a person engaged
9 in the business of selling tobacco products, for advertising, as a
10 means of evading the provisions of this chapter, or for any other
11 purposes whatsoever.

12 (7) "Wholesale sales price" means the established price for which
13 a manufacturer sells a tobacco product to a distributor, exclusive of
14 any discount or other reduction;

15 (8) "Business" means any trade, occupation, activity, or enterprise
16 engaged in for the purpose of selling or distributing tobacco products
17 in this state;

18 (9) "Place of business" means any place where tobacco products are
19 sold or where tobacco products are manufactured, stored, or kept for
20 the purpose of sale or consumption, including any vessel, vehicle,
21 airplane, train, or vending machine;

22 (10) "Retail outlet" means each place of business from which
23 tobacco products are sold to consumers;

24 (11) (~~("Department" means the state department of revenue)~~) "Board"
25 means the liquor control board.

26 **Sec. 28.** RCW 82.26.050 and 1975 1st ex.s. c 278 s 72 are each
27 amended to read as follows:

28 (~~(From and after July 1, 1959)~~) No person shall engage in the
29 business of a distributor or subjobber of tobacco products at any place

1 of business without first having received from the (~~department of~~
2 ~~revenue~~) board a certificate of registration (~~as provided in RCW~~
3 ~~82.32.030~~)).

4 **Sec. 29.** RCW 82.26.060 and 1975 1st ex.s. c 278 s 73 are each
5 amended to read as follows:

6 Every distributor shall keep at each registered place of business
7 complete and accurate records for that place of business, including
8 itemized invoices, of tobacco products held, purchased, manufactured,
9 brought in or caused to be brought in from without the state, or
10 shipped or transported to retailers in this state, and of all sales of
11 tobacco products made, except sales to the ultimate consumer.

12 These records shall show the names and addresses of purchasers(~~(~~
13 ~~the inventory of all tobacco products on hand on July 1, 1959,~~) and
14 other pertinent papers and documents relating to the purchase, sale, or
15 disposition of tobacco products.

16 When a registered distributor sells tobacco products exclusively to
17 the ultimate consumer at the address given in the certificate, no
18 invoice of those sales shall be required, but itemized invoices shall
19 be made of all tobacco products transferred to other retail outlets
20 owned or controlled by that registered distributor. All books,
21 records, and other papers and documents required by this section to be
22 kept shall be preserved for a period of at least five years after the
23 date of the documents, as aforesaid, or the date of the entries thereof
24 appearing in the records, unless the (~~department of revenue~~) board,
25 in writing, authorizes their destruction or disposal at an earlier
26 date. At any time during usual business hours the (~~department~~)
27 board, or its duly authorized agents or employees, may enter any place
28 of business of a distributor, without a search warrant, and inspect the
29 premises, the records required to be kept under this chapter, and the

1 tobacco products contained therein, to determine whether or not all the
2 provisions of this chapter are being fully complied with. If the
3 ((department)) board, or any of its agents or employees, are denied
4 free access or are hindered or interfered with in making such
5 examination, the registration certificate of the distributor at such
6 premises shall be subject to revocation by the ((department)) board.

7 **Sec. 30.** RCW 82.26.080 and 1975 1st ex.s. c 278 s 74 are each
8 amended to read as follows:

9 Every retailer and subjobber shall procure itemized invoices of all
10 tobacco products purchased. The invoices shall show the name and
11 address of the seller and the date of purchase. The retailer and
12 subjobber shall preserve a legible copy of each such invoice for five
13 years from the date of purchase. Invoices shall be available for
14 inspection by the ((~~department of revenue~~)) board or its authorized
15 agents or employees at the retailer's or subjobber's place of business.

16 **Sec. 31.** RCW 82.26.090 and 1975 1st ex.s. c 278 s 75 are each
17 amended to read as follows:

18 Records of all deliveries or shipments of tobacco products from any
19 public warehouse of first destination in this state shall be kept by
20 the warehouse and be available to the ((~~department of revenue~~)) board
21 for inspection. They shall show the name and address of the consignee,
22 the date, the quantity of tobacco products delivered, and such other
23 information as the ((department)) board may require. These records
24 shall be preserved for five years from the date of delivery of the
25 tobacco products.

26 **Sec. 32.** RCW 82.26.110 and 1975 1st ex.s. c 278 s 76 are each
27 amended to read as follows:

1 Where tobacco products upon which the tax imposed by this chapter
2 has been reported and paid, are shipped or transported by the
3 distributor to retailers without the state, to be sold by those
4 retailers, or are returned to the manufacturer by the distributor or
5 destroyed by the distributor, credit of such tax may be made to the
6 distributor in accordance with (~~regulations~~) rules prescribed by the
7 (~~department of revenue~~) board.

8 **Sec. 33.** RCW 82.26.120 and 1963 ex.s. c 28 s 5 are each amended to
9 read as follows:

10 All of the provisions contained in chapter 82.32 RCW shall have
11 full force and application with respect to taxes imposed under the
12 provisions of this chapter; except that "department of revenue" or
13 "department" means the liquor control board.

14 NEW SECTION. **Sec. 34.** A new section is added to chapter 82.26 RCW
15 to read as follows:

16 The board may adopt rules to implement this chapter.

17 NEW SECTION. **Sec. 35.** A new section is added to chapter 82.32 RCW
18 to read as follows:

19 The liquor control board may contract with the department for the
20 collection of taxes, penalties, and interest, and the making of
21 refunds, related to the administration and enforcement of chapters
22 82.24 and 82.26 RCW.

23 NEW SECTION. **Sec. 36.** All powers, duties, and functions of the
24 department of revenue pertaining to chapters 82.24 and 82.26 RCW are
25 transferred to the liquor control board. All references to the
26 director or department of revenue in the Revised Code of Washington

1 shall be construed to mean the liquor control board when referring to
2 the functions transferred in this section.

3 NEW SECTION. **Sec. 37.** All reports, documents, surveys, books,
4 records, files, papers, or written material in the possession of the
5 department of revenue pertaining to the powers, functions, and duties
6 transferred shall be delivered to the custody of the liquor control
7 board. All cabinets, furniture, office equipment, motor vehicles, and
8 other tangible property employed by the department of revenue in
9 carrying out the powers, functions, and duties transferred shall be
10 made available to the liquor control board. All funds, credits, or
11 other assets held in connection with the powers, functions, and duties
12 transferred shall be assigned to the liquor control board.

13 Any appropriations made to the department of revenue for carrying
14 out the powers, functions, and duties transferred shall, on the
15 effective date of this section, be transferred and credited to the
16 liquor control board.

17 Whenever any question arises as to the transfer of any personnel,
18 funds, books, documents, records, papers, files, equipment, or other
19 tangible property used or held in the exercise of the powers and the
20 performance of the duties and functions transferred, the director of
21 financial management shall make a determination as to the proper
22 allocation and certify the same to the state agencies concerned.

23 NEW SECTION. **Sec. 38.** All employees of the department of
24 revenue engaged in performing the powers, functions, and duties
25 transferred are transferred to the jurisdiction of the liquor control
26 board. All employees classified under chapter 41.06 RCW, the state
27 civil service law, are assigned to the liquor control board to perform
28 their usual duties upon the same terms as formerly, without any loss of

1 rights, subject to any action that may be appropriate thereafter in
2 accordance with the laws and rules governing state civil service.

3 NEW SECTION. **Sec. 39.** All rules and all pending business
4 before the department of revenue pertaining to the powers, functions,
5 and duties transferred shall be continued and acted upon by the liquor
6 control board. All existing contracts and obligations shall remain in
7 full force and shall be performed by the liquor control board.

8 NEW SECTION. **Sec. 40.** The transfer of the powers, duties,
9 functions, and personnel of the department of revenue shall not affect
10 the validity of any act performed prior to the effective date of this
11 section.

12 NEW SECTION. **Sec. 41.** If apportionments of budgeted funds are
13 required because of the transfers directed by sections 36 through 39 of
14 this act, the director of financial management shall certify the
15 apportionments to the agencies affected, the state auditor, and the
16 state treasurer. Each of these shall make the appropriate transfer and
17 adjustments in funds and appropriation accounts and equipment records
18 in accordance with the certification.

19 NEW SECTION. **Sec. 42.** Nothing contained in sections 36 through
20 41 of this act may be construed to alter any existing collective
21 bargaining unit or the provisions of any existing collective bargaining
22 agreement until the agreement has expired or until the bargaining unit
23 has been modified by action of the personnel board as provided by law.

24 NEW SECTION. **Sec. 43.** RCW 82.24.260 and 1987 c 80 s 3 & 1986 c 3
25 s 13 are each repealed.

1 NEW SECTION. **Sec. 44.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 45.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect July 1, 1991.