
SENATE BILL 5845

State of Washington

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By Senators McDonald, Gaspard, Hayner, Wojahn, Oke, Metcalf, Thorsness, L. Smith, A. Smith and Bauer.

Read first time February 26, 1991. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of adult entertainment materials
2 and services; amending RCW 82.08.020, 82.08.010, 82.12.020, 82.12.0252,
3 82.12.035, 82.12.040, 82.12.060, and 82.14.020; reenacting and amending
4 RCW 82.12.010; adding a new section to chapter 82.32 RCW; creating a
5 new section; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the sale and
8 use of adult entertainment materials and services result in increased
9 costs to the state through the provision of increased governmental
10 services, including human services and criminal justice services. It
11 is the legislature's intention that the activities that result in these
12 increased services bear more of the costs of these services. The
13 legislature intends to dedicate the revenues from a tax on the sale and
14 use of adult entertainment materials and services to crime victims'

1 compensation, with an emphasis towards providing services, support, or
2 therapy to those children who are victims of sexual abuse.

3 **Sec. 2.** RCW 82.08.020 and 1985 c 32 s 1 are each amended to read
4 as follows:

5 (1) There is levied and there shall be collected a tax on each
6 retail sale in this state equal to six and five-tenths percent of the
7 selling price.

8 (2) In addition to any tax imposed under subsection (1) of this
9 section there is levied and there shall be collected a tax on each
10 retail sale of adult entertainment materials and services equal to
11 eighteen and one-half percent of the selling price.

12 (3) The tax imposed under this chapter shall apply to successive
13 retail sales of the same property.

14 (~~((3))~~) (4) The rates provided in this section (~~((applies))~~) apply to
15 taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

16 **Sec. 3.** RCW 82.08.010 and 1985 c 38 s 3 are each amended to read
17 as follows:

18 For the purposes of this chapter:

19 (1) "Selling price" means the consideration, whether money,
20 credits, rights, or other property except trade-in property of like
21 kind, expressed in the terms of money paid or delivered by a buyer to
22 a seller without any deduction on account of the cost of tangible
23 property sold, the cost of materials used, labor costs, interest,
24 discount, delivery costs, taxes other than taxes imposed under this
25 chapter if the seller advertises the price as including the tax or that
26 the seller is paying the tax, or any other expenses whatsoever paid or
27 accrued and without any deduction on account of losses; but shall not
28 include the amount of cash discount actually taken by a buyer; and

1 shall be subject to modification to the extent modification is provided
2 for in RCW 82.08.080.

3 When tangible personal property is rented or leased under
4 circumstances that the consideration paid does not represent a
5 reasonable rental for the use of the articles so rented or leased, the
6 "selling price" shall be determined as nearly as possible according to
7 the value of such use at the places of use of similar products of like
8 quality and character under such rules as the department of revenue may
9 prescribe((?)).

10 (2) "Seller" means every person, including the state and its
11 departments and institutions, making sales at retail or retail sales to
12 a buyer or consumer, whether as agent, broker, or principal, except
13 "seller" does not mean the state and its departments and institutions
14 when making sales to the state and its departments and
15 institutions((?)).

16 (3) "Buyer" and "consumer" include, without limiting the scope
17 hereof, every individual, receiver, assignee, trustee in bankruptcy,
18 trust, estate, firm, copartnership, joint venture, club, company, joint
19 stock company, business trust, corporation, association, society, or
20 any group of individuals acting as a unit, whether mutual, cooperative,
21 fraternal, nonprofit, or otherwise, municipal corporation, quasi
22 municipal corporation, and also the state, its departments and
23 institutions and all political subdivisions thereof, irrespective of
24 the nature of the activities engaged in or functions performed, and
25 also the United States or any instrumentality thereof((?)).

26 (4) "Adult entertainment materials and services" means those
27 entertainment materials and services that are primarily oriented to an
28 interest in sex, including but not limited to magazines, photographs,
29 motion pictures, videotapes, videodiscs, cable television services,
30 telephone services, audiotapes, computer programs, and paraphernalia.

1 "Adult entertainment materials and services" does not include (a) books
2 or magazines that contain no photographs or other graphics or (b)
3 motion pictures, videotapes, videodiscs, or cable television services
4 that do not contain any explicit sex of the type that would be rated
5 "X" using the standards existing on January 1, 1991, of the Motion
6 Picture Association of America, Inc. Any motion picture, videotape,
7 videodisc, cable television service, or other visual medium that
8 contains any explicit sex of the type that would be rated "X" using
9 these standards shall be considered to be primarily oriented to an
10 interest in sex.

11 (5) The meaning attributed in chapter 82.04 RCW to the terms "tax
12 year," "taxable year," "person," "company," "sale," "sale at retail,"
13 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
14 in business," "cash discount," "successor," "consumer," "in this state"
15 and "within this state" shall apply equally to the provisions of this
16 chapter.

17 NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW
18 to read as follows:

19 All revenues collected on sales and use of adult entertainment
20 materials and services under chapter 82.08 or 82.12 RCW shall be
21 deposited in the public safety and education account under RCW
22 43.08.250 and shall only be used for the purposes of crime victims'
23 compensation, with an emphasis towards providing services, support, or
24 therapy to those children who are victims of sexual abuse.

25 **Sec. 5.** RCW 82.12.010 and 1985 and by section 1, chapter 222, Laws
26 of 1985 c 132 s 1 are each reenacted and amended to read as follows:

27 For the purposes of this chapter:

1 (1) "Value of the article used" shall mean the consideration,
2 whether money, credit, rights, or other property except trade-in
3 property of like kind, expressed in terms of money, paid or given or
4 contracted to be paid or given by the purchaser to the seller for the
5 article of tangible personal property, the use of which is taxable
6 under this chapter. The term includes, in addition to the
7 consideration paid or given or contracted to be paid or given, the
8 amount of any tariff or duty paid with respect to the importation of
9 the article used. In case the article used is acquired by lease or by
10 gift or is extracted, produced, or manufactured by the person using the
11 same or is sold under conditions wherein the purchase price does not
12 represent the true value thereof, the value of the article used shall
13 be determined as nearly as possible according to the retail selling
14 price at place of use of similar products of like quality and character
15 under such rules and regulations as the department of revenue may
16 prescribe.

17 In case the articles used are acquired by bailment, the value of
18 the use of the articles so used shall be in an amount representing a
19 reasonable rental for the use of the articles so bailed, determined as
20 nearly as possible according to the value of such use at the places of
21 use of similar products of like quality and character under such rules
22 and regulations as the department of revenue may prescribe: PROVIDED,
23 That in case any such articles of tangible personal property are used
24 in respect to the construction, repairing, decorating, or improving of,
25 and which become or are to become an ingredient or component of, new or
26 existing buildings or other structures under, upon, or above real
27 property of or for the United States, any instrumentality thereof, or
28 a county or city housing authority created pursuant to chapter 35.82
29 RCW, including the installing or attaching of any such articles therein
30 or thereto, whether or not such personal property becomes a part of the

1 realty by virtue of installation, then the value of the use of such
2 articles so used shall be determined according to the retail selling
3 price of such articles, or in the absence of such a selling price, as
4 nearly as possible according to the retail selling price at place of
5 use of similar products of like quality and character or, in the
6 absence of either of these selling price measures, such value may be
7 determined upon a cost basis, in any event under such rules and
8 regulations as the department of revenue may prescribe.

9 In the case of articles owned by a user engaged in business outside
10 the state which are brought into the state for no more than ninety days
11 in any period of three hundred sixty-five consecutive days and which
12 are temporarily used for business purposes by the person in this state,
13 the value of the article used shall be an amount representing a
14 reasonable rental for the use of the articles, unless the person has
15 paid tax under this chapter or chapter 82.08 RCW upon the full value of
16 the article used, as defined in the first paragraph of this subsection.

17 In the case of articles manufactured or produced by the user and
18 used in the manufacture or production of products sold or to be sold to
19 the department of defense of the United States, the value of the
20 articles used shall be determined according to the value of the
21 ingredients of such articles.

22 In the case of an article manufactured or produced for purposes of
23 serving as a prototype for the development of a new or improved
24 product, the value of the article used shall be determined by: (a) The
25 retail selling price of such new or improved product when first offered
26 for sale; or (b) the value of materials incorporated into the prototype
27 in cases in which the new or improved product is not offered for sale.

28 (2) "Value of the service used" shall mean the consideration paid,
29 whether money, credit, rights, or other property, expressed in terms of
30 money, paid or given or contracted to be paid or given by the purchaser

1 to the seller for the service, the use of which is taxable under this
2 chapter. If the service is received by gift or under conditions
3 wherein the purchase price does not represent the true value of the
4 service, the value of the service used shall be determined as nearly as
5 possible according to the retail selling price at the place of use of
6 similar services of like quality and character under rules prescribed
7 by the department of revenue.

8 (3) "Use," "used," "using," or "put to use" shall have their
9 ordinary meaning, and shall mean:

10 (a) With respect to personal property, the first act within this
11 state by which the taxpayer takes or assumes dominion or control over
12 the article of tangible personal property (as a consumer), and include
13 installation, storage, withdrawal from storage, or any other act
14 preparatory to subsequent actual use or consumption within this state;
15 and

16 (b) With respect to an adult entertainment service which affords a
17 benefit or is otherwise capable of use within this state, the use
18 within this state of the service, regardless of the place of
19 performance.

20 ~~((3))~~ (4) "Taxpayer" and "purchaser" include all persons included
21 within the meaning of the word "buyer" and the word "consumer" as
22 defined in chapters 82.04 and 82.08 RCW((7)).

23 ~~((4))~~ (5) "Retailer" means every seller as defined in RCW
24 82.08.010 and every person engaged in the business of selling tangible
25 personal property or adult entertainment services at retail and every
26 person required to collect from purchasers the tax imposed under this
27 chapter((7)).

28 ~~((5))~~ (6) The meaning ascribed to words and phrases in chapters
29 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
30 effect with respect to taxes imposed under the provisions of this

1 chapter. "Consumer," in addition to the meaning ascribed to it in
2 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
3 person who distributes or displays, or causes to be distributed or
4 displayed, any article of tangible personal property, except
5 newspapers, the primary purpose of which is to promote the sale of
6 products or services. In addition, "consumer" includes any person who
7 purchases, acquires, or uses any adult entertainment service other than
8 for resale in the regular course of business. Resale of a service
9 means a separately stated charge to another person for the service by
10 a person who has paid or is obligated to pay an identical charge to one
11 who has originally rendered the identical service.

12 **Sec. 6.** RCW 82.12.020 and 1983 c 7 s 7 are each amended to read as
13 follows:

14 There is hereby levied and there shall be collected from every
15 person in this state a tax or excise for the privilege of using within
16 this state as a consumer any article of tangible personal property or
17 adult entertainment service purchased at retail, or acquired by lease,
18 gift, repossession, or bailment, or extracted or produced or
19 manufactured by the person so using the same, or otherwise furnished to
20 a person engaged in any business taxable under RCW 82.04.280,
21 subsections (2) or (7). This tax will not apply with respect to the
22 use of any article of tangible personal property purchased, extracted,
23 produced or manufactured outside this state until the transportation of
24 such article has finally ended or until such article has become
25 commingled with the general mass of property in this state. This tax
26 shall apply to the use of every article of tangible personal property,
27 including property acquired at a casual or isolated sale, and including
28 byproducts used by the manufacturer thereof, except as hereinafter
29 provided, irrespective of whether the article or similar articles are

1 manufactured or are available for purchase within this state. Except
2 as provided in RCW 82.12.0252, payment by one purchaser or user of
3 tangible personal property or adult entertainment services of the tax
4 imposed by chapter 82.08 or 82.12 RCW shall not have the effect of
5 exempting any other purchaser or user of the same property or services
6 from the taxes imposed by such chapters. The tax shall be levied and
7 collected in an amount equal to the value of the article used or the
8 value of the service used by the taxpayer multiplied by the rate in
9 effect for the retail sales tax under RCW 82.08.020, as now or
10 hereafter amended, in the county in which the article or service is
11 used.

12 **Sec. 7.** RCW 82.12.0252 and 1980 c 37 s 52 are each amended to read
13 as follows:

14 The provisions of this chapter shall not apply in respect to the
15 use of any article of tangible personal property or adult entertainment
16 service purchased at retail or acquired by lease, gift or bailment if
17 the sale thereof to, or the use thereof by, the present user or his
18 bailor or donor has already been subjected to the tax under chapter
19 82.08 or 82.12 RCW and such tax has been paid by the present user or by
20 his bailor or donor; or in respect to the use of property acquired by
21 bailment and such tax has once been paid based on reasonable rental as
22 determined by RCW
23 82.12.060 measured by the value of the article at time of first use
24 multiplied by the tax rate imposed by chapter 82.08 or 82.12 RCW as of
25 the time of first use; or in respect to the use of any article of
26 tangible personal property acquired by bailment, if the property was
27 acquired by a previous bailee from the same bailor for use in the same
28 general activity and such original bailment was prior to June 9, 1961.

1 **Sec. 8.** RCW 82.12.035 and 1987 c 27 s 2 are each amended to read
2 as follows:

3 A credit shall be allowed against the taxes imposed by this chapter
4 upon the use of tangible personal property or adult entertainment
5 services in the state of Washington in the amount that the present user
6 thereof or his or her bailor or donor has paid a retail sales or use
7 tax with respect to such property or service to any other state of the
8 United States, any political subdivision thereof, the District of
9 Columbia, and any foreign country or political subdivision thereof,
10 prior to the use of such property or services in Washington.

11 **Sec. 9.** RCW 82.12.040 and 1986 c 48 s 1 are each amended to read
12 as follows:

13 (1) Every person who maintains in this state a place of business or
14 a stock of goods, or engages in business activities within this state,
15 shall obtain from the department a certificate of registration, and
16 shall, at the time of making sales, or making transfers of either
17 possession or title or both, of tangible personal property or adult
18 entertainment services for use in this state, collect from the
19 purchasers or transferees the tax imposed under this chapter. For the
20 purposes of this chapter, the phrase "maintains in this state a place
21 of business" shall include the solicitation of sales and/or taking of
22 orders by sales agents or traveling representatives. For the purposes
23 of this chapter, "engages in business activity within this state"
24 includes every activity which is sufficient under the Constitution of
25 the United States for this state to require collection of tax under
26 this chapter. The department shall in rules specify activities which
27 constitute engaging in business activity within this state, and shall
28 keep the rules current with future court interpretations of the
29 Constitution of the United States.

1 (2) Every person who engages in this state in the business of
2 acting as an independent selling agent for persons who do not hold a
3 valid certificate of registration, and who receives compensation by
4 reason of sales of tangible personal property or adult entertainment
5 services of his or her principals (~~made~~) for use in this state,
6 shall, at the time such sales are made, collect from the purchasers the
7 tax imposed under this chapter, and for that purpose shall be deemed a
8 retailer as defined in this chapter.

9 (3) The tax required to be collected by this chapter shall be
10 deemed to be held in trust by the retailer until paid to the department
11 and any retailer who appropriates or converts the tax collected to his
12 or her own use or to any use other than the payment of the tax provided
13 herein to the extent that the money required to be collected is not
14 available for payment on the due date as prescribed shall be guilty of
15 a misdemeanor. In case any seller fails to collect the tax herein
16 imposed or having collected the tax, fails to pay the same to the
17 department in the manner prescribed, whether such failure is the result
18 of his or her own acts or the result of acts or conditions beyond his
19 or her control, he or she shall nevertheless, be personally liable to
20 the state for the amount of such tax.

21 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
22 transferee, either directly or indirectly, and by whatever means, all
23 or any part of the tax levied by this chapter shall be guilty of a
24 misdemeanor.

25 **Sec. 10.** RCW 82.12.060 and 1975 1st ex.s. c 278 s 54 are each
26 amended to read as follows:

27 In the case of installment sales and leases of personal property or
28 adult entertainment services, the department, by regulation, may

1 provide for the collection of taxes upon the installments of the
2 purchase price, or amount of rental, as of the time the same fall due.

3 In the case of property acquired by bailment, the department, by
4 regulation, may provide for payment of the tax due in installments
5 based on the reasonable rental for the property as determined under RCW
6 82.12.010(1).

7 **Sec. 11.** RCW 82.14.020 and 1983 2nd ex.s. c 3 s 31 are each
8 amended to read as follows:

9 For purposes of this chapter:

10 (1) A retail sale consisting solely of the sale of tangible
11 personal property shall be deemed to have occurred at the retail outlet
12 at or from which delivery is made to the consumer;

13 (2) Except as provided in subsection (5) of this section, a retail
14 sale consisting essentially of the performance of personal business or
15 professional services or adult entertainment services shall be deemed
16 to have occurred at the place at which such services were primarily
17 performed;

18 (3) A retail sale consisting of the rental of tangible personal
19 property shall be deemed to have occurred (a) in the case of a rental
20 involving periodic rental payments, at the primary place of use by the
21 lessee during the period covered by each payment, or (b) in all other
22 cases, at the place of first use by the lessee;

23 (4) A retail sale within the scope of the second paragraph of RCW
24 82.04.050, and a retail sale of taxable personal property to be
25 installed by the seller shall be deemed to have occurred at the place
26 where the labor and services involved were primarily performed;

27 (5) A retail sale consisting of the providing to a consumer of
28 telephone service, as defined in RCW 82.04.065, other than a sale of
29 tangible personal property under subsection (1) of this section or a

1 rental of tangible personal property under subsection (3) of this
2 section, shall be deemed to have occurred at the situs of the telephone
3 or other instrument through which the telephone service is rendered;

4 (6) "City" means a city or town;

5 (7) The meaning ascribed to words and phrases in chapters 82.04,
6 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
7 applicable, shall have full force and effect with respect to taxes
8 imposed under authority of this chapter;

9 (8) "Taxable event" shall mean any retail sale, or any use of an
10 article of tangible personal property, upon which a state tax is
11 imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or
12 may hereafter be amended: PROVIDED, HOWEVER, That the term shall not
13 include a retail sale taxable pursuant to RCW 82.08.150, as now or
14 hereafter amended;

15 (9) "Treasurer or other legal depository" shall mean the treasurer
16 or legal depository of a county or city.

17 NEW SECTION. **Sec. 12.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 13.** This act shall take effect on August 1,
22 1991.