
ENGROSSED SENATE BILL 5897

State of Washington

56th Legislature

1999 Regular Session

By Senators Costa, Winsley, Thibaudeau and Oke; by request of Attorney General

Read first time 02/15/1999. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the sale of export cigarettes; amending RCW
2 82.24.110, 82.24.130, and 82.24.145; adding a new section to chapter
3 82.24 RCW; creating a new section; prescribing penalties; and declaring
4 an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) Cigarette smoking presents serious
7 public health concerns to the state and to the citizens of the state.
8 The surgeon general has determined that smoking causes lung cancer,
9 heart disease, and other serious diseases and that there are hundreds
10 of thousands of tobacco-related deaths in the United States each year.
11 These diseases most often do not appear until many years after the
12 person in question begins smoking.

13 (2) It is the policy of the state that consumers be adequately
14 informed about the adverse health effects of cigarette smoking by
15 including warning notices on each package of cigarettes.

16 (3) It is the policy of the state that manufacturers and importers
17 of cigarettes not make any material misrepresentation of fact regarding
18 the health consequences of using cigarettes, including compliance with
19 applicable federal laws, regulations, and policies.

1 (4) It is the intent of the legislature to align state law with
2 federal laws, regulations, and policies relating to the manufacture,
3 importation, and marketing of cigarettes, and in particular, the
4 Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 et
5 seq.) and 26 U.S.C. Sec. 5754.

6 (5) The legislature finds that consumers and retailers purchasing
7 cigarettes are entitled to be fully informed about any adverse health
8 effects of cigarette smoking by inclusion of warning notices on each
9 package of cigarettes and to be assured through appropriate enforcement
10 measures that cigarettes they purchase were manufactured for
11 consumption within the United States.

12 **Sec. 2.** RCW 82.24.110 and 1997 c 420 s 4 are each amended to read
13 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (n) To possess, sell, or transport within this state any container
29 or package of cigarettes that does not comply with this chapter.

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

1 to possess unstamped cigarettes in this state. Violation of this
2 section shall be punished as a class C felony under Title 9A RCW.

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

8 **Sec. 3.** RCW 82.24.130 and 1997 c 420 s 5 are each amended to read
9 as follows:

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

11 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
12 that are found at any point within this state, which articles are held,
13 owned, or possessed by any person, and that do not have the stamps
14 affixed to the packages or containers; and any container or package of
15 cigarettes possessed or held for sale that does not comply with this
16 chapter.

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

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

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

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

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

36 (2) Property subject to forfeiture under this chapter may be seized
37 by any agent of the department authorized to collect taxes, any
38 enforcement officer of the board, or law enforcement officer of this

1 state upon process issued by any superior court or district court
2 having jurisdiction over the property. Seizure without process may be
3 made if:

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

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

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

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

17 When property is forfeited under this chapter the department may:

18 (1) Retain the property or any part thereof for official use or
19 upon application by any law enforcement agency of this state, another
20 state, or the District of Columbia, or of the United States for the
21 exclusive use of enforcing the provisions of this chapter or the laws
22 of any other state or the District of Columbia or of the United States.

23 (2) Sell the property at public auction to the highest bidder after
24 due advertisement, but the department before delivering any of the
25 goods so seized shall require the person to whom the property is sold
26 to affix the proper amount of stamps. The proceeds of the sale and all
27 moneys forfeited under this chapter shall be first applied to the
28 payment of all proper expenses of any investigation leading to the
29 seizure and of the proceedings for forfeiture and sale, including
30 expenses of seizure, maintenance of custody, advertising, and court
31 costs. The balance of the proceeds and all moneys shall be deposited
32 in the general fund of the state. Proper expenses of investigation
33 includes costs incurred by any law enforcement agency or any federal,
34 state, or local agency.

35 (3) Notwithstanding the provisions of subsections (1) and (2) of
36 this section, cigarettes seized for a violation of section 5 of this
37 act shall be sold only for export from the United States to the highest

1 bidder who meets all applicable state and federal requirements to
2 export such cigarettes or destroyed.

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

5 (1) No stamp may be affixed to, or made upon, any container or
6 package of cigarettes if:

7 (a) The container or package differs in any respect with the
8 requirements of the Federal Cigarette Labeling and Advertising Act (15
9 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any
10 other information upon a package of cigarettes that is to be sold
11 within the United States;

12 (b) The container or package has been imported into the United
13 States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

14 (c) The container or package, including a container of individually
15 stamped containers or packages, is labeled "For Export Only," "U.S. Tax
16 Exempt," "For Use Outside U.S.," or similar wording indicating that the
17 manufacturer did not intend that the product be sold in the United
18 States; or

19 (d) The container or package has been altered by adding or deleting
20 the wording, labels, or warnings described in (a) or (c) of this
21 subsection.

22 (2) In addition to the penalty and forfeiture provisions otherwise
23 provided for in this chapter, a violation of this section is a
24 deceptive act or practice under the consumer protection act, chapter
25 19.86 RCW.

26 NEW SECTION. **Sec. 6.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 immediately.

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