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**SUBSTITUTE HOUSE BILL 2686**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Hudgins, Condotta and Conway; by request of Liquor Control Board)

READ FIRST TIME 01/29/04.

1       AN ACT Relating to inspection of books, documents, and records  
2       pertaining to the transportation or possession of cigarettes; amending  
3       RCW 82.24.110 and 70.155.105; reenacting and amending RCW 82.24.130;  
4       adding a new section to chapter 82.24 RCW; and prescribing penalties.

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

6       NEW SECTION.   **Sec. 1.** A new section is added to chapter 82.24 RCW  
7       to read as follows:

8       (1) For the purpose of obtaining information concerning any matter  
9       relating to the administration or enforcement of this title, the board,  
10      or any of its agents, may inspect: (a) The books, documents, or  
11      records of any person transporting cigarettes to any person or entity  
12      in this state; and (b) books, documents, or records containing any  
13      information relating to the transportation or possession of cigarettes  
14      in the possession of a specific common or contract carrier as defined  
15      in RCW 81.80.010 doing business in this state.

16      (2) Failure to allow inspection under this section may result in  
17      forfeiture and seizure of the cigarettes pursuant to RCW 82.24.130.

1       **Sec. 2.** RCW 82.24.110 and 2003 c 114 s 5 are each amended to read  
2 as follows:

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

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

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

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

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

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

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

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

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

24       (i) For any retailer to have in possession in any place of business  
25 any of the articles herein taxed, unless the same have the proper  
26 stamps attached;

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

31       (k) For any wholesaler or retailer or his or her agents or  
32 employees to fail to produce on demand of the department of revenue all  
33 invoices of all the articles herein taxed or stamps bought by him or  
34 her or received in his or her place of business within five years prior  
35 to such demand unless he or she can show by satisfactory proof that the  
36 nonproduction of the invoices was due to causes beyond his or her  
37 control;

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

6 (m) For any person to possess or transport in this state a quantity  
7 of sixty thousand cigarettes or less unless the proper stamps required  
8 by this chapter have been affixed or unless: (i) Notice of the  
9 possession or transportation has been given as required by RCW  
10 82.24.250; (ii) the person transporting the cigarettes has in actual  
11 possession invoices or delivery tickets which show the true name and  
12 address of the consignor or seller, the true name and address of the  
13 consignee or purchaser, and the quantity and brands of the cigarettes  
14 so transported; and (iii) the cigarettes are consigned to or purchased  
15 by any person in this state who is authorized by this chapter to  
16 possess unstamped cigarettes in this state;

17 (n) To possess, sell, or transport within this state any container  
18 or package of cigarettes that does not comply with this chapter;

19 (o) To fail to produce or allow inspection of books, documents, or  
20 records by the board or its agents as provided in section 1 of this  
21 act.

22 (2) It is unlawful for any person knowingly or intentionally to  
23 possess or to transport in this state a quantity in excess of sixty  
24 thousand cigarettes unless the proper stamps required by this chapter  
25 are affixed thereto or unless: (a) Proper notice as required by RCW  
26 82.24.250 has been given; (b) the person transporting the cigarettes  
27 actually possesses invoices or delivery tickets showing the true name  
28 and address of the consignor or seller, the true name and address of  
29 the consignee or purchaser, and the quantity and brands of the  
30 cigarettes so transported; and (c) the cigarettes are consigned to or  
31 purchased by a person in this state who is authorized by this chapter  
32 to possess unstamped cigarettes in this state. Violation of this  
33 section shall be punished as a class C felony under Title 9A RCW.

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

1       **Sec. 3.** RCW 82.24.130 and 2003 c 114 s 7, 2003 c 113 s 4, and 2003  
2 c 25 s 9 are each reenacted and amended to read as follows:

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

4       (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
5 that are found at any point within this state, which articles are held,  
6 owned, or possessed by any person, and that do not have the stamps  
7 affixed to the packages or containers; any container or package of  
8 cigarettes possessed or held for sale that does not comply with this  
9 chapter; and any container or package of cigarettes that is  
10 manufactured, sold, or possessed in violation of RCW 82.24.570.

11       (b) 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 failing to produce or allow  
14 inspection of books, documents, or records by the board or its agents  
15 as provided in section 1 of this act.

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

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

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

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

33       ~~((+e))~~ (d) Any vending machine used for the purpose of violating  
34 the provisions of this chapter.

35       ~~((+d))~~ (e) Any cigarettes that are stamped, sold, imported, or  
36 offered or possessed for sale in this state in violation of RCW  
37 70.158.030(3). For the purposes of this subsection (1)~~((+d))~~ (e),  
38 "cigarettes" has the meaning as provided in RCW 70.158.020(3).

1       (~~(e)~~) (f) All cigarettes sold, delivered, or attempted to be  
2 delivered in violation of RCW 70.155.105.

3       (2) Property subject to forfeiture under this chapter may be seized  
4 by any agent of the department authorized to collect taxes, any  
5 enforcement officer of the board, or law enforcement officer of this  
6 state upon process issued by any superior court or district court  
7 having jurisdiction over the property. Seizure without process may be  
8 made if:

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

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

15       (3) Notwithstanding the foregoing provisions of this section,  
16 articles taxed in this chapter which are in the possession of a  
17 wholesaler, licensed under Washington state law, for a period of time  
18 necessary to affix the stamps after receipt of the articles, shall not  
19 be considered contraband unless they are manufactured, sold, or  
20 possessed in violation of RCW 82.24.570.

21       **Sec. 4.** RCW 70.155.105 and 2003 c 113 s 2 are each amended to read  
22 as follows:

23       (1) It is unlawful for a person who mails, ships, or otherwise  
24 delivers cigarettes to fail to:

25       (a) Verify the age of the receiver of the cigarettes upon delivery;  
26 and

27       (b) Obtain in writing, before the first delivery sale of  
28 cigarettes, verification of the receiver's address and that the  
29 receiver of the cigarettes is not a minor. The statement must also  
30 confirm that the purchaser understands: (i) That signing another  
31 person's name to the certification is a violation of RCW  
32 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a  
33 violation of RCW 26.28.080; (iii) that the purchase of cigarettes by  
34 minors is a violation of RCW 70.155.080; and (iv) that he or she has  
35 the option to receive mailings from a tobacco company about tobacco  
36 products.

1 (2) It is unlawful for a person to mail, ship, or otherwise deliver  
2 cigarettes in connection with a delivery sale unless before the first  
3 delivery sale to the consumer that person:

4 (a) Either verifies the information contained in the certification  
5 provided by the prospective consumer in subsection (1) of this section  
6 against a commercially available data base, or obtains a photocopy of  
7 an officially issued identification containing the bearer's age,  
8 signature, and photograph. The only forms of identification that are  
9 acceptable as proof of age for the purchase for tobacco products are:

10 (i) A liquor control authority card of identification issued by a state  
11 of the United States or a province of Canada, (ii) a driver's license,  
12 instruction permit, or identification card issued by a state of the  
13 United States or a province of Canada, (iii) a United States military  
14 identification card, (iv) a passport, or (v) a merchant marine  
15 identification card issued by the United States coast guard;

16 (b) Provides to the prospective consumer through electronic mail or  
17 other means a notice that meets the requirements of subsection (3) of  
18 this section; and

19 (c) In the case of an order for cigarettes pursuant to an  
20 advertisement on the internet, receives payment for the delivery sale  
21 from the prospective consumer by a credit card or debit card, or by  
22 check that has been issued in the prospective consumer's name.

23 (3) The notice required under subsection (2)(b) of this section  
24 must include:

25 (a) A prominent and clearly legible statement that cigarette sales  
26 to minors are illegal;

27 (b) A prominent and clearly legible statement that consists of one  
28 of the warnings set forth in section 4(a)(1) of the federal cigarette  
29 labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a  
30 quarterly basis;

31 (c) A prominent and clearly legible statement that sales of  
32 cigarettes are restricted to those consumers who provide verifiable  
33 proof of age in accordance with subsection (1) of this section; and

34 (d) A prominent and clearly legible statement that cigarette sales  
35 are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an  
36 explanation of how the tax has been or is to be paid with respect to a  
37 delivery sale.

1 (4) It is unlawful for a person who mails, ships, or otherwise  
2 delivers cigarettes in connection with a delivery sale to fail to:

3 (a) Include as part of the bill of lading, or other shipping  
4 documents, a clear and conspicuous statement that states: "Cigarettes:  
5 Washington Law Prohibits Shipping to Individuals Under 18, and Requires  
6 the Payment of all Applicable Taxes";

7 (b) Contract only with private carriers who employ delivery agents  
8 who will verify the receiver of the cigarettes is not a minor upon  
9 delivery. The only forms of identification that are acceptable as  
10 proof of age for the purchase for tobacco products are: (i) A liquor  
11 control authority card of identification issued by a state of the  
12 United States or a province of Canada, (ii) a driver's license,  
13 instruction permit, or identification card issued by a state of the  
14 United States or a province of Canada, (iii) a United States military  
15 identification card, (iv) a passport, or (v) a merchant marine  
16 identification card issued by the United States coast guard;

17 (c) Provide to the delivery service retained for the delivery sale  
18 evidence of full compliance with this section.

19 (5)(a) Before making delivery sales or mailings, shipping, or  
20 otherwise delivering cigarettes to a Washington address in connection  
21 with any sales, any person who mails, ships, or otherwise delivers  
22 cigarettes shall file with the board a statement setting forth the  
23 person's name, trade name, and the address of the person's principal  
24 place of business and any other place of business.

25 (b) Any person who mails, ships, or otherwise delivers cigarettes  
26 in connection with a delivery sale shall within fifteen days after the  
27 first of each month file with the board a report of all delivery sales  
28 made by the person within this state for the preceding month. The  
29 report shall show the name and address of the consumer to whom the  
30 cigarettes were sold, the kind and (~~quality~~) quantity, the dollar  
31 amount of each kind sold, and the date of delivery thereof.

32 (6)(a) Any person other than a delivery service who violates any of  
33 the provisions of this section is guilty of a class C felony punishable  
34 by up to five years in prison and a fine of ten thousand dollars, and  
35 payment of the cost of investigation and prosecution, including  
36 attorneys' fees.

37 (b) Any person other than a delivery service who commits a second  
38 or subsequent violation of this section is (~~guilty of~~) guilty of a

1 class B felony punishable by up to ten years in prison and a fine of  
2 twenty thousand dollars, and payment of the cost of investigation and  
3 prosecution, including attorneys' fees.

4 (c) Any delivery service that violates any provision of this  
5 section shall be guilty of a gross misdemeanor punishable by up to one  
6 year in jail and a fine of five thousand dollars.

7 (7) Any person that fails to collect or remit to the department of  
8 revenue any tax required under chapter 82.24 RCW in connection with a  
9 delivery sale shall be assessed, in addition to any other penalty, a  
10 penalty of five times the retail value of the cigarettes involved.

11 (8) For the purpose of obtaining information concerning any matter  
12 relating to the administration or enforcement of this title, the board  
13 or any of its agents may inspect the books, documents, and records of  
14 any person who makes delivery sales or mailings, or ships or otherwise  
15 delivers cigarettes or retains another person to make delivery sales or  
16 mailings, or to ship or otherwise deliver cigarettes insofar as such  
17 books, documents, and/or records pertain to the financial transaction  
18 involved. If such a person neglects or refuses to produce and submit  
19 for inspection any book, record, or document as required by this  
20 section when requested to do so by the board or its agent, then the  
21 board or the attorney general may seek an order in superior court  
22 compelling such production of books, records, or documents.

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