

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1930

Chapter 25, Laws of 2003

58th Legislature
2003 Regular Session

TOBACCO PRODUCTS--MANUFACTURERS, WHOLESALERS, DISTRIBUTORS

EFFECTIVE DATE: 7/1/03

Passed by the House March 17, 2003
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 8, 2003
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved April 16, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1930** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

April 16, 2003 - 4:13 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1930

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Finance (originally sponsored by
Representatives Morris, Cairnes, Gombosky and Ericksen)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to restricting the ability of tobacco product
2 manufacturers, wholesalers, and distributors and other persons to
3 violate or to facilitate the violation of chapter 70.157 RCW; amending
4 RCW 82.24.130, 82.24.145, and 82.24.210; adding a new chapter to Title
5 70 RCW; prescribing penalties; providing an effective date; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that violations of RCW
9 70.157.020 threaten the integrity of the tobacco master settlement
10 agreement, the fiscal soundness of the state, and the public health.
11 The legislature finds the enacting procedural enhancements will help
12 prevent violations and aid the enforcement of RCW 70.157.020 and
13 thereby safeguard the master settlement agreement, the fiscal soundness
14 of the state, and the public health. The provisions of this act are
15 not intended to and shall not be interpreted to amend chapter 70.157
16 RCW.

17 NEW SECTION. **Sec. 2.** The following definitions apply to this
18 chapter unless the context clearly requires otherwise.

1 (1) "Brand family" means all styles of cigarettes sold under the
2 same trademark and differentiated from one another by means of
3 additional modifiers or descriptors, including, but not limited to,
4 "menthol," "lights," "kings," and "100s," and includes any brand name
5 alone or in conjunction with any other word, trademark, logo, symbol,
6 motto, selling message, recognizable pattern of colors, or any other
7 indicia of product identification identical or similar to, or
8 identifiable with, a previously known brand of cigarettes.

9 (2) "Board" means the liquor control board.

10 (3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

11 (4) "Director" means the director of the department of revenue
12 except as otherwise noted.

13 (5) "Directory" means the directory to be created and published on
14 a web site by the attorney general pursuant to section 3(2) of this
15 act.

16 (6) "Distributor" has the same meaning as in RCW 82.26.010(3),
17 except that for purposes of this chapter, no person is a distributor if
18 that person does not deal with cigarettes as defined in this section.

19 (7) "Master settlement agreement" has the same meaning as in RCW
20 70.157.010(e).

21 (8) "Nonparticipating manufacturer" means any tobacco product
22 manufacturer that is not a participating manufacturer.

23 (9) "Participating manufacturer" has the meaning given that term in
24 section II(jj) of the master settlement agreement.

25 (10) "Qualified escrow fund" has the same meaning as in RCW
26 70.157.010(f).

27 (11) "Stamp" means "stamp" as defined in RCW 82.24.010(7) or as
28 referred to in RCW 43.06.455(4).

29 (12) "Tobacco product manufacturer" has the same meaning as in RCW
30 70.157.010(i).

31 (13) "Units sold" has the same meaning as in RCW 70.157.010(j).

32 (14) "Wholesaler" has the same meaning as in RCW 82.24.010.

33 NEW SECTION. **Sec. 3.** (1) Every tobacco product manufacturer whose
34 cigarettes are sold in this state, whether directly or through a
35 wholesaler, distributor, retailer, or similar intermediary or
36 intermediaries, shall execute and deliver on a form prescribed by the
37 attorney general a certification to the attorney general, no later than

1 the thirtieth day of April each year, certifying under penalty of
2 perjury that, as of the date of such certification, the tobacco product
3 manufacturer is either a participating manufacturer; or is in full
4 compliance with RCW 70.157.020(b)(1), including all payments required
5 by that section or this act.

6 (a) A participating manufacturer shall include in its certification
7 a list of its brand families. The participating manufacturer shall
8 update the list thirty calendar days prior to any addition to or
9 modification of its brand families by executing and delivering a
10 supplemental certification to the attorney general.

11 (b) A nonparticipating manufacturer shall include in its
12 certification: (i) A list of all of its brand families and the number
13 of units sold for each brand family that were sold in the state during
14 the preceding calendar year; (ii) a list of all of its brand families
15 that have been sold in the state at anytime during the current calendar
16 year; (iii) indicating, by an asterisk, any brand family sold in the
17 state during the preceding calendar year that is no longer being sold
18 in the state as of the date of such certification; and (iv) identifying
19 by name and address any other manufacturer of brand families in the
20 preceding or current calendar year. The nonparticipating manufacturer
21 shall update the list thirty calendar days prior to any addition to or
22 modification of its brand families by executing and delivering a
23 supplemental certification to the attorney general.

24 (c) In the case of a nonparticipating manufacturer, the
25 certification shall further certify:

26 (i) That the nonparticipating manufacturer is registered to do
27 business in the state or has appointed a resident agent for service of
28 process and provided notice as required by section 4 of this act;

29 (ii) That the nonparticipating manufacturer: (A) Has established
30 and continues to maintain a qualified escrow fund; and (B) has executed
31 a qualified escrow agreement that has been reviewed and approved by the
32 attorney general and that governs the qualified escrow fund;

33 (iii) That the nonparticipating manufacturer is in full compliance
34 with RCW 70.157.020(b)(1) and this chapter, and any rules adopted
35 pursuant thereto; and

36 (iv)(A) The name, address, and telephone number of the financial
37 institution where the nonparticipating manufacturer has established a
38 qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all

1 rules adopted thereunder; (B) the account number of the qualified
2 escrow fund and any subaccount number for the state of Washington; (C)
3 the amount the nonparticipating manufacturer placed in the fund for
4 cigarettes sold in the state during the preceding calendar year, the
5 date and amount of each deposit, and evidence or verification as may be
6 deemed necessary by the attorney general to confirm the foregoing; and
7 (D) the amount and date of any withdrawal or transfer of funds the
8 nonparticipating manufacturer made at any time from the fund or from
9 any other qualified escrow fund into which it ever made escrow payments
10 pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

11 (d) A tobacco product manufacturer may not include a brand family
12 in its certification unless: (i) In the case of a participating
13 manufacturer, the participating manufacturer affirms that the brand
14 family is to be deemed to be its cigarettes for purposes of calculating
15 its payments under the master settlement agreement for the relevant
16 year, in the volume and shares determined pursuant to the master
17 settlement agreement; and (ii) in the case of a nonparticipating
18 manufacturer, the nonparticipating manufacturer affirms that the brand
19 family is to be deemed to be its cigarettes for purposes of RCW
20 70.157.020(b)(1). Nothing in this section limits or otherwise affects
21 the state's right to maintain that a brand family constitutes
22 cigarettes of a different tobacco product manufacturer for purposes of
23 calculating payments under the master settlement agreement or for
24 purposes of RCW 70.157.020.

25 (e) A tobacco product manufacturer shall maintain all invoices and
26 documentation of sales and other information relied upon for such
27 certification for a period of five years, unless otherwise required by
28 law to maintain them for a greater period of time.

29 (2) Not later than November 1, 2003, the attorney general shall
30 develop and publish on its web site a directory listing all tobacco
31 product manufacturers that have provided current and accurate
32 certifications conforming to the requirements of this section and all
33 brand families that are listed in these certifications, except as noted
34 below:

35 (a) The attorney general shall not include or retain in the
36 directory the name or brand families of any nonparticipating
37 manufacturer that has failed to provide the required certification or
38 whose certification the attorney general determines is not in

1 compliance with subsection (1)(b) and (c) of this section, unless the
2 attorney general has determined that the violation has been cured to
3 the satisfaction of the attorney general.

4 (b) Neither a tobacco product manufacturer nor brand family shall
5 be included or retained in the directory if the attorney general
6 concludes, in the case of a nonparticipating manufacturer, that: (i)
7 Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any
8 period for any brand family, whether or not listed by the
9 nonparticipating manufacturer, has not been fully paid into a qualified
10 escrow fund governed by a qualified escrow agreement that has been
11 approved by the attorney general; or (ii) any outstanding final
12 judgment, including interest, for a violation of RCW 70.157.020(b)(1)
13 that has not been fully satisfied for the brand family or manufacturer.

14 (c) The attorney general shall update the directory as necessary in
15 order to correct mistakes and to add or remove a tobacco product
16 manufacturer or brand family to keep the directory in conformity with
17 the requirements of this chapter. The attorney general shall transmit,
18 by email or other practicable means to each wholesaler or distributor,
19 notice of any addition to or removal from the directory of any tobacco
20 product manufacturer or brand family. Unless otherwise provided by
21 agreement between the wholesaler or distributor and a tobacco product
22 manufacturer, the wholesaler or distributor shall be entitled to a
23 refund from a tobacco product manufacturer for any money paid by the
24 wholesaler or distributor to the tobacco product manufacturer for any
25 cigarettes of the tobacco product manufacturer still held by the
26 wholesaler or distributor on the date of notice by the attorney general
27 of the removal from the directory of that tobacco product manufacturer
28 or the brand family of the cigarettes. The attorney general shall not
29 restore to the directory the tobacco product manufacturer or the brand
30 family until the tobacco product manufacturer has paid the wholesaler
31 or distributor any refund due.

32 (d) Every wholesaler and distributor shall provide and update as
33 necessary an electronic mail address to the attorney general for the
34 purpose of receiving any notifications as may be required by this
35 chapter.

36 (e) A tobacco product manufacturer included in the directory may
37 request that a new brand family be certified and added to the
38 directory. Within forty-five business days of receiving the request,

1 the attorney general will respond by either: (i) Certifying the new
2 brand family; or (ii) denying the request. However, in cases where the
3 attorney general determines that it needs clarification as to whether
4 the requestor is actually the tobacco product manufacturer, the
5 attorney general may take more time as needed to clarify the request,
6 to locate and assemble information or documents needed to process the
7 request, and to notify persons or agencies affected by the request.

8 (f) The web site will state that this act applies only to
9 cigarettes including, pursuant to the definition of "cigarettes" in
10 this act, roll-your-own tobacco.

11 (3) It is unlawful for any person (a) to affix a stamp to a package
12 or other container of cigarettes of a tobacco product manufacturer or
13 brand family not included in the directory, or to pay or cause to be
14 paid the tobacco products tax on any package or container; or (b) to
15 sell, offer, or possess for sale in this state or import for sale in
16 this state, any cigarettes of a tobacco product manufacturer or brand
17 family not included in the directory.

18 NEW SECTION. **Sec. 4.** (1) Any nonresident or foreign
19 nonparticipating manufacturer that has not registered to do business in
20 the state as a foreign corporation or business entity shall, as a
21 condition precedent to having its brand families included or retained
22 in the directory, appoint and continually engage without interruption
23 the services of an agent in this state to act as agent for the service
24 of process on whom all process, and any action or proceeding against it
25 concerning or arising out of the enforcement of this chapter and RCW
26 70.157.020(b)(1), may be served in any manner authorized by law. The
27 service shall constitute legal and valid service of process on the
28 nonparticipating manufacturer. The nonparticipating manufacturer shall
29 provide the name, address, phone number, and proof of the appointment
30 and availability of the agent to the satisfaction of the attorney
31 general.

32 (2) The nonparticipating manufacturer shall provide notice to the
33 attorney general thirty calendar days prior to termination of the
34 authority of an agent and shall further provide proof to the
35 satisfaction of the attorney general of the appointment of a new agent
36 no less than five calendar days prior to the termination of an existing
37 agent appointment. In the event an agent terminates an agency

1 appointment, the nonparticipating manufacturer shall notify the
2 attorney general of the termination within five calendar days and
3 include proof to the satisfaction of the attorney general of the
4 appointment of a new agent.

5 (3) Any nonparticipating manufacturer whose cigarettes are sold in
6 this state, who has not appointed and engaged an agent as required in
7 this section, shall be deemed to have appointed the secretary of state
8 as the agent and may be proceeded against in courts of this state by
9 service of process upon the secretary of state. However, the
10 appointment of the secretary of state as agent shall not satisfy the
11 condition precedent for having the brand families of the
12 nonparticipating manufacturer included or retained in the directory.

13 NEW SECTION. **Sec. 5.** (1) In addition to the reporting
14 requirements under RCW 70.157.010(j) and the rules adopted thereunder,
15 not later than twenty-five calendar days after the end of each calendar
16 month, and more frequently if directed by the director, each wholesaler
17 and distributor shall submit information the director requires to
18 facilitate compliance with this chapter, including, but not limited to,
19 a list by brand family of the total number of cigarettes, or, in the
20 case of roll-your-own, the equivalent stick count for which the
21 wholesaler or distributor affixed stamps during the previous calendar
22 month or otherwise paid the tax due for the cigarettes. Each
23 wholesaler and distributor shall maintain and make available to the
24 director, all invoices and documentation of sales of all
25 nonparticipating manufacturer cigarettes and any other information
26 relied upon in reporting to the attorney general or the director for a
27 period of five years.

28 (2) Information or records required to be furnished to the
29 department, the board, or the attorney general are confidential and
30 shall not be disclosed. However, the director and the board are
31 authorized to disclose to the attorney general any information received
32 under this chapter and requested by the attorney general for purposes
33 of determining compliance with and enforcing the provisions of this
34 chapter. The director, the board, and the attorney general may share
35 with each other the information received under this chapter, and may
36 share information with other federal, state, or local agencies,
37 including without limitation the board, only for purposes of

1 enforcement of this chapter, RCW 70.157.020, or corresponding laws of
2 other states. If a tobacco product manufacturer that is required to
3 establish a qualified escrow fund under RCW 70.157.020 disputes the
4 attorney general's determination of what that manufacturer needs to
5 place into escrow, and the attorney general determines that the dispute
6 can likely be resolved by disclosing reports from the relevant
7 distributors and wholesalers indicating the sales or purchases of the
8 tobacco manufacturer's products, then the attorney general shall
9 request voluntary waivers of confidentiality so that the reports may be
10 disclosed to the tobacco product manufacturer to help resolve the
11 dispute. If the waivers are provided, then the director and the
12 attorney general are authorized to disclose the waived confidential
13 information collected on the sales or purchases of cigarettes to the
14 tobacco product manufacturer. However, before the attorney general or
15 the director discloses the waived confidential information, the tobacco
16 product manufacturer must provide to the attorney general all records
17 relating to its sales or purchases of cigarettes in dispute. The
18 information provided to a tobacco product manufacturer pursuant to this
19 subsection (2) shall be limited to brands or products of that
20 manufacturer only, may be used only for the limited purpose of
21 determining the appropriate escrow deposit, and may not be disclosed by
22 the tobacco product manufacturer.

23 (3) The attorney general may require at any time from the
24 nonparticipating manufacturer proof, from the financial institution in
25 which the manufacturer has established a qualified escrow fund for the
26 purpose of compliance with RCW 70.157.020(b)(1), of the amount of money
27 in the fund, exclusive of interest, the amount and date of each deposit
28 to the fund, and the amount and date of each withdrawal from the fund.

29 (4) In addition to the information required to be submitted
30 pursuant to section 3 of this act, this section, and chapters 82.24 and
31 82.26 RCW, the director, the board, or the attorney general may require
32 a wholesaler, distributor, or tobacco product manufacturer to submit
33 any additional information including, but not limited to, samples of
34 the packaging or labeling of each brand family, as is necessary to
35 enable the attorney general to determine whether a tobacco product
36 manufacturer is in compliance with this chapter. If the director, the
37 board, or the attorney general makes a request for information pursuant

1 to this subsection (4), the tobacco product manufacturer, distributor,
2 or wholesaler shall comply promptly.

3 (5) A nonparticipating manufacturer that either: (a) Has not
4 previously made escrow payments to the state of Washington pursuant to
5 RCW 70.157.020; or (b) has not actually made any escrow payments for
6 more than one year, shall make the required escrow deposits in
7 quarterly installments during the first year in which the sales covered
8 by the deposits are made or in the first year in which the payments are
9 made. The director or the attorney general may require production of
10 information sufficient to enable the attorney general to determine the
11 adequacy of the amount of the installment deposit.

12 NEW SECTION. **Sec. 6.** (1) In addition to or in lieu of any other
13 civil or criminal remedy provided by law, upon a determination that a
14 wholesaler has violated section 3(3) of this act or any rule adopted
15 pursuant to this chapter, the director or the board may revoke or
16 suspend the license of the wholesaler in the manner provided by chapter
17 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell
18 cigarettes in violation of section 3(3) of this act shall constitute a
19 separate violation. For each violation of this chapter, the director
20 or the board may also impose a civil penalty in an amount not to exceed
21 the greater of five hundred percent of the retail value of the
22 cigarettes or five thousand dollars upon a determination of violation
23 of section 3(3) of this act or any rules adopted pursuant thereto. The
24 penalty shall be imposed in the manner provided by chapter 82.24 RCW.

25 (2) The attorney general may seek an injunction in superior court
26 to restrain a threatened or actual violation of section 3(3) or 5 (1)
27 or (4) of this act by a person and to compel the person to comply with
28 these sections. In any action brought pursuant to this section, the
29 state shall be entitled to recover the costs of investigation, costs of
30 the action, and reasonable attorney fees.

31 (3) It is unlawful for a person to: (a) Sell or distribute
32 cigarettes or (b) acquire, hold, own, possess, transport, import, or
33 cause to be imported cigarettes, that the person knows or should know
34 are intended for distribution or sale in the state in violation of
35 section 3(3) of this act. A violation of this subsection (3) is a
36 gross misdemeanor.

1 (4) Any violation of this chapter is not reasonable in relation to
2 the development and preservation of business and is an unfair and
3 deceptive act or practice and an unfair method of competition in the
4 conduct of trade or commerce in violation of RCW 19.86.020. Standing
5 to bring an action to enforce RCW 19.86.020 for violation of this
6 chapter shall lie solely with the attorney general. Remedies provided
7 by chapter 19.86 RCW are cumulative and not exclusive.

8 NEW SECTION. **Sec. 7.** (1) A determination of the attorney general
9 not to include or to remove from the directory a brand family or
10 tobacco product manufacturer shall be final agency action for purposes
11 of review under RCW 34.05.570(4).

12 (2) No person shall be issued a license or granted a renewal of a
13 license to act as a wholesaler unless the person has certified in
14 writing under penalty of perjury, that the person will comply fully
15 with this section.

16 (3) The first reports of wholesalers and distributors are due
17 August 25, 2003. The certifications by a tobacco product manufacturer
18 described in section 3(1) of this act are due September 15, 2003. The
19 directory described in section 3(2) of this act shall be published or
20 made available by November 1, 2003.

21 (4) The attorney general, the board, and the director may adopt
22 rules as necessary to effect the administration of this chapter.

23 (5) In any action brought by the state to enforce this chapter, the
24 state is entitled to recover the costs of investigation, expert witness
25 fees, costs of the action, and reasonable attorney fees.

26 (6) If a court determines that a person has violated this chapter,
27 the court shall order any profits, gain, gross receipts, or other
28 benefit from the violation to be disgorged and paid to the general
29 fund. Unless otherwise expressly provided, the remedies or penalties
30 provided by this chapter are cumulative to each other and to the
31 remedies or penalties available under all other laws of this state.

32 NEW SECTION. **Sec. 8.** If a court of competent jurisdiction finds
33 that the provisions of this act and chapter 70.157 RCW conflict and
34 cannot be harmonized, then the provisions of chapter 70.157 RCW shall
35 control. If any section, subsection, subdivision, paragraph, sentence,
36 clause, or phrase of this act causes chapter 70.157 RCW no longer to

1 constitute a qualifying or model statute, as those terms are defined in
2 the master settlement agreement, then that portion of this act shall
3 not be valid. If any section, subsection, subdivision, paragraph,
4 sentence, clause, or phrase of this act is for any reason held to be
5 invalid, unlawful, or unconstitutional, the decision shall not affect
6 the validity of the remaining portions of this act or any part thereof.

7 **Sec. 9.** RCW 82.24.130 and 1999 c 193 s 3 are each amended to read
8 as follows:

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

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

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

35 (d) Any cigarettes that are stamped, sold, imported, or offered or
36 possessed for sale in this state in violation of section 3(3) of this

1 act. For the purposes of this subsection (1)(d), "cigarettes" has the
2 meaning as provided in section 2(3) of this act.

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 or retailer, licensed under Washington state law, for a
18 period of time necessary to affix the stamps after receipt of the
19 articles, shall not be considered contraband.

20 **Sec. 10.** RCW 82.24.145 and 1999 c 193 s 4 are each amended to read
21 as follows:

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

23 (1) Retain the property or any part thereof for official use or
24 upon application by any law enforcement agency of this state, another
25 state, or the District of Columbia, or of the United States for the
26 exclusive use of enforcing the provisions of this chapter or the laws
27 of any other state or the District of Columbia or of the United States.

28 (2) Sell the property at public auction to the highest bidder after
29 due advertisement, but the department before delivering any of the
30 goods so seized shall require the person to whom the property is sold
31 to affix the proper amount of stamps. The proceeds of the sale and all
32 moneys forfeited under this chapter shall be first applied to the
33 payment of all proper expenses of any investigation leading to the
34 seizure and of the proceedings for forfeiture and sale, including
35 expenses of seizure, maintenance of custody, advertising, and court
36 costs. The balance of the proceeds and all moneys shall be deposited

1 in the general fund of the state. Proper expenses of investigation
2 includes costs incurred by any law enforcement agency or any federal,
3 state, or local agency.

4 (3) Notwithstanding the provisions of subsections (1) and (2) of
5 this section, cigarettes seized for a violation of RCW 82.24.035 or
6 section 3(3) of this act shall be destroyed. For the purposes of this
7 subsection (3) "cigarettes" has the same meaning as provided in section
8 2(3) of this act.

9 **Sec. 11.** RCW 82.24.210 and 1975 1st ex.s. c 278 s 68 are each
10 amended to read as follows:

11 The department of revenue may promulgate rules and regulations
12 providing for the refund to dealers for the cost of stamps affixed to
13 articles taxed herein, which by reason of damage become unfit for sale
14 and are destroyed by the dealer or returned to the manufacturer or
15 jobber. In the case of any articles to which stamps have been affixed,
16 and which articles have been sold and shipped to a regular dealer in
17 such articles in another state, the seller in this state shall be
18 entitled to a refund of the actual amount of the stamps so affixed,
19 less the affixing discount, upon condition that the seller in this
20 state makes affidavit that the articles were sold and shipped outside
21 of the state and that he has received from the purchaser outside the
22 state a written acknowledgment that he has received such articles with
23 the amount of stamps affixed thereto, together with the name and
24 address of such purchaser. The department of revenue may redeem any
25 unused stamps purchased from it at the face value thereof less the
26 affixing discount. A distributor or wholesaler that has lawfully
27 affixed stamps to cigarettes, and subsequently is unable to sell those
28 cigarettes lawfully because the cigarettes are removed from the
29 directory created pursuant to section 3(2) of this act, may apply to
30 the department for a refund of the cost of the stamps.

31 NEW SECTION. **Sec. 12.** Sections 1 through 8 of this act constitute
32 a new chapter in Title 70 RCW.

33 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 July 1, 2003.

Passed by the House March 17, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.