

CERTIFICATION OF ENROLLMENT

SENATE BILL 6097

Chapter 180, Laws of 2005

59th Legislature
2005 Regular Session

TAXATION--TOBACCO PRODUCTS

EFFECTIVE DATE: 7/1/05

Passed by the Senate April 15, 2005
YEAS 40 NAYS 6

BRAD OWEN

President of the Senate

Passed by the House April 20, 2005
YEAS 79 NAYS 19

FRANK CHOPP

Speaker of the House of Representatives

Approved April 23, 2005.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6097** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 23, 2005 - 11:36 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6097

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senators Prentice, Hewitt, Eide, Delvin, Doumit and Schoesler

Read first time 03/24/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to increasing other tobacco products tax revenue
2 through various measures that include the establishment of a new tax
3 rate coupled with enhanced enforcement provisions; amending RCW
4 82.26.030, 82.26.010, 82.26.020, 82.26.060, 82.26.080, 82.26.070,
5 82.26.100, 82.26.110, and 82.24.550; adding new sections to chapter
6 82.26 RCW; repealing RCW 82.26.025, 82.26.028, and 82.26.050;
7 prescribing penalties; providing an effective date; and declaring an
8 emergency.

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

10 **Sec. 1.** RCW 82.26.030 and 2002 c 325 s 4 are each amended to read
11 as follows:

12 It is the intent and purpose of this chapter to levy a tax on all
13 tobacco products sold, used, consumed, handled, or distributed within
14 this state and to collect the tax from the distributor as defined in
15 RCW 82.26.010. It is the further intent and purpose of this chapter to
16 impose the tax once, and only once, on all tobacco products for sale in
17 this state, but nothing in this chapter shall be construed to exempt
18 any person taxable under any other law or under any other tax imposed
19 under Title 82 RCW. It is the further intent and purpose of this

1 chapter that the distributor who first possesses the tobacco product in
2 this state shall be the distributor liable for the tax and that in most
3 instances the tax will be based on the actual price that the
4 distributor paid for the tobacco product, unless the distributor is
5 affiliated with the seller.

6 **Sec. 2.** RCW 82.26.010 and 2002 c 325 s 1 are each amended to read
7 as follows:

8 ~~((As used in this chapter:))~~ The definitions in this section apply
9 throughout this chapter unless the context clearly requires otherwise.

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~~((÷))~~.

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, or
24 stores tobacco products in this state for sale in this state, (c) any
25 person engaged in the business of selling tobacco products without this
26 state who ships or transports tobacco products to retailers in this
27 state, to be sold by those retailers, (d) any person engaged in the
28 business of selling tobacco products in this state who handles for sale
29 any tobacco products that are within this state but upon which tax has
30 not been imposed~~((÷))~~.

31 ~~((("Subjobber" means any person, other than a manufacturer or~~
32 ~~distributor, who buys tobacco products from a distributor and sells~~
33 ~~them to persons other than the ultimate consumers;~~

34 ~~(5))~~ "Retailer" means any person engaged in the business of
35 selling tobacco products to ultimate consumers~~((÷))~~.

36 ~~((6))~~ (5)(a) "Sale" means any transfer, exchange, or barter, in

1 any manner or by any means whatsoever, for a consideration, and
2 includes and means all sales made by any person.

3 ~~((14))~~ (b) The term "sale" includes a gift by a person engaged in
4 the business of selling tobacco products, for advertising, promoting,
5 or as a means of evading the provisions of this chapter(~~(, or for any~~
6 ~~other purposes whatsoever;~~

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

10 ~~((8))~~ (6) "Business" means any trade, occupation, activity, or
11 enterprise engaged in for the purpose of selling or distributing
12 tobacco products in this state(~~(+)~~)).

13 ~~((9))~~ (7) "Place of business" means any place where tobacco
14 products are sold or where tobacco products are manufactured, stored,
15 or kept for the purpose of sale (~~(or consumption)~~), including any
16 vessel, vehicle, airplane, train, or vending machine(~~(+)~~)).

17 ~~((10))~~ (8) "Retail outlet" means each place of business from
18 which tobacco products are sold to consumers(~~(+)~~)).

19 ~~((11))~~ (9) "Department" means the (~~(state)~~) department of
20 revenue(~~(+)~~)).

21 ~~((12))~~ (10) "Person" means any individual, receiver,
22 administrator, executor, assignee, trustee in bankruptcy, trust,
23 estate, firm, copartnership, joint venture, club, company, joint stock
24 company, business trust, municipal corporation, the state and its
25 departments and institutions, political subdivision of the state of
26 Washington, corporation, limited liability company, association,
27 society, (~~(or)~~) any group of individuals acting as a unit, whether
28 mutual, cooperative, fraternal, nonprofit, or otherwise. The term
29 excludes any person immune from state taxation, including the United
30 States or its instrumentalities, and federally recognized Indian tribes
31 and enrolled tribal members, conducting business within Indian
32 country(~~(+)~~)).

33 ~~((13))~~ (11) "Indian country" means the same as defined in chapter
34 82.24 RCW).

35 (12) "Actual price" means the total amount of consideration for
36 which tobacco products are sold, valued in money, whether received in
37 money or otherwise, including any charges by the seller necessary to

1 complete the sale such as charges for delivery, freight,
2 transportation, or handling.

3 (13) "Affiliated" means related in any way by virtue of any form or
4 amount of common ownership, control, operation, or management.

5 (14) "Board" means the liquor control board.

6 (15) "Cigar" means a roll for smoking that is of any size or shape
7 and that is made wholly or in part of tobacco, irrespective of whether
8 the tobacco is pure or flavored, adulterated or mixed with any other
9 ingredient, if the roll has a wrapper made wholly or in greater part of
10 tobacco. "Cigar" does not include a cigarette.

11 (16) "Cigarette" has the same meaning as in RCW 82.24.010.

12 (17) "Manufacturer's representative" means a person hired by a
13 manufacturer to sell or distribute the manufacturer's tobacco products,
14 and includes employees and independent contractors.

15 (18)(a) "Taxable sales price" means:

16 (i) In the case of a taxpayer that is not affiliated with the
17 manufacturer, distributor, or other person from whom the taxpayer
18 purchased tobacco products, the actual price for which the taxpayer
19 purchased the tobacco products;

20 (ii) In the case of a taxpayer that purchases tobacco products from
21 an affiliated manufacturer, affiliated distributor, or other affiliated
22 person, and that sells those tobacco products to unaffiliated
23 distributors, unaffiliated retailers, or ultimate consumers, the actual
24 price for which that taxpayer sells those tobacco products to
25 unaffiliated distributors, unaffiliated retailers, or ultimate
26 consumers;

27 (iii) In the case of a taxpayer that sells tobacco products only to
28 affiliated distributors or affiliated retailers, the price, determined
29 as nearly as possible according to the actual price, that other
30 distributors sell similar tobacco products of like quality and
31 character to unaffiliated distributors, unaffiliated retailers, or
32 ultimate consumers;

33 (iv) In the case of a taxpayer that is a manufacturer selling
34 tobacco products directly to ultimate consumers, the actual price for
35 which the taxpayer sells those tobacco products to ultimate consumers;

36 (v) In the case of a taxpayer that has acquired tobacco products
37 under a sale as defined in subsection (5)(b) of this section, the
38 price, determined as nearly as possible according to the actual price,

1 that the taxpayer or other distributors sell the same tobacco products
2 or similar tobacco products of like quality and character to
3 unaffiliated distributors, unaffiliated retailers, or ultimate
4 consumers; or

5 (vi) In any case where (a)(i) through (v) of this subsection do not
6 apply, the price, determined as nearly as possible according to the
7 actual price, that the taxpayer or other distributors sell the same
8 tobacco products or similar tobacco products of like quality and
9 character to unaffiliated distributors, unaffiliated retailers, or
10 ultimate consumers.

11 (b) For purposes of (a)(i) and (ii) of this subsection only,
12 "person" includes both persons as defined in subsection (10) of this
13 section and any person immune from state taxation, including the United
14 States or its instrumentalities, and federally recognized Indian tribes
15 and enrolled tribal members, conducting business within Indian country.

16 (c) The department may adopt rules regarding the determination of
17 taxable sales price under this subsection.

18 (19) "Taxpayer" means a person liable for the tax imposed by this
19 chapter.

20 (20) "Unaffiliated distributor" means a distributor that is not
21 affiliated with the manufacturer, distributor, or other person from
22 whom the distributor has purchased tobacco products.

23 (21) "Unaffiliated retailer" means a retailer that is not
24 affiliated with the manufacturer, distributor, or other person from
25 whom the retailer has purchased tobacco products.

26 **Sec. 3.** RCW 82.26.020 and 2002 c 325 s 2 are each amended to read
27 as follows:

28 (1) There is levied and there shall be collected a tax upon the
29 sale, ~~((use, consumption,))~~ handling, or distribution of all tobacco
30 products in this state at the following rate ~~((of forty five percent of~~
31 ~~the wholesale sales price of such tobacco products))~~:
32

33 (a) Seventy-five percent of the taxable sales price of cigars, not
34 to exceed fifty cents per cigar; or

35 (b) Seventy-five percent of the taxable sales price of all tobacco
36 products that are not cigars.

37 (2) Taxes under this section shall be imposed at the time the
distributor (a) brings, or causes to be brought, into this state from

1 without the state tobacco products for sale, (b) makes, manufactures,
2 (~~or~~) fabricates, or stores tobacco products in this state for sale in
3 this state, (c) ships or transports tobacco products to retailers in
4 this state, to be sold by those retailers, or (d) handles for sale any
5 tobacco products that are within this state but upon which tax has not
6 been imposed.

7 ~~(3) ((An additional tax is imposed equal to seven percent~~
8 ~~multiplied by the tax payable under subsection (1) of this section.~~

9 ~~(4) An additional tax is imposed equal to ten percent of the~~
10 ~~wholesale sales price of tobacco products. The moneys collected under~~
11 ~~this subsection shall be deposited in the health services account~~
12 ~~created under RCW 43.72.900)) The moneys collected under this section~~
13 ~~shall be deposited as follows:~~

14 (a) Thirty-seven percent in the general fund;

15 (b) Fifty percent in the health services account created under RCW
16 43.72.900; and

17 (c) Thirteen percent in the water quality account under RCW
18 70.146.030 for the period beginning July 1, 2005, through June 30,
19 2021, and in the general fund for the period beginning July 1, 2021.

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

22 (1) Every distributor shall keep at each (~~registered~~) place of
23 business complete and accurate records for that place of business,
24 including itemized invoices, of tobacco products held, purchased,
25 manufactured, brought in or caused to be brought in from without the
26 state, or shipped or transported to retailers in this state, and of all
27 sales of tobacco products made(~~(, except sales to the ultimate~~
28 ~~consumer))~~).

29 (2) These records shall show the names and addresses of purchasers,
30 the inventory of all tobacco products (~~on hand on July 1, 1959~~), and
31 other pertinent papers and documents relating to the purchase, sale, or
32 disposition of tobacco products. All invoices and other records
33 required by this section to be kept shall be preserved for a period of
34 five years from the date of the invoices or other documents or the date
35 of the entries appearing in the records.

36 ~~((When a registered distributor sells tobacco products exclusively~~
37 ~~to the ultimate consumer at the address given in the certificate, no~~

1 ~~invoice of those sales shall be required, but itemized invoices shall~~
2 ~~be made of all tobacco products transferred to other retail outlets~~
3 ~~owned or controlled by that registered distributor. All books,~~
4 ~~records, and other papers and documents required by this section to be~~
5 ~~kept shall be preserved for a period of at least five years after the~~
6 ~~date of the documents, as aforesaid, or the date of the entries thereof~~
7 ~~appearing in the records, unless the department of revenue, in writing,~~
8 ~~authorizes their destruction or disposal at an earlier date.))~~

9 (3) At any time during usual business hours the department, board,
10 or its duly authorized agents or employees, may enter any place of
11 business of a distributor, without a search warrant, and inspect the
12 premises, the records required to be kept under this chapter, and the
13 tobacco products contained therein, to determine whether or not all the
14 provisions of this chapter are being fully complied with. If the
15 department, board, or any of its agents or employees, are denied free
16 access or are hindered or interfered with in making such examination,
17 the registration certificate issued under RCW 82.32.030 of the
18 distributor at such premises shall be subject to revocation, and any
19 licenses issued under this chapter or chapter 82.24 RCW are subject to
20 suspension or revocation, by the department.

21 **Sec. 5.** RCW 82.26.080 and 1975 1st ex.s. c 278 s 74 are each
22 amended to read as follows:

23 (1) Every retailer ((and subjobber)) shall procure itemized
24 invoices of all tobacco products purchased. The invoices shall show
25 the seller's name and address ((of the seller and)), the date of
26 purchase, and all prices and discounts.

27 (2) The retailer ((and subjobber)) shall ((preserve a legible copy
28 of each such invoice)) keep at each retail outlet copies of complete,
29 accurate, and legible invoices for that retail outlet or place of
30 business. All invoices required to be kept under this section shall be
31 preserved for five years from the date of purchase. ((Invoices shall
32 be available for inspection by the department of revenue or its
33 authorized agents or employees at the retailer's or subjobber's place
34 of business.))

35 (3) At any time during usual business hours the department, board,
36 or its duly authorized agents or employees may enter any retail outlet
37 without a search warrant, and inspect the premises for invoices

1 required to be kept under this section and the tobacco products
2 contained in the retail outlet, to determine whether or not all the
3 provisions of this chapter are being fully complied with. If the
4 department, board, or any of its agents or employees, are denied free
5 access or are hindered or interfered with in making the inspection, the
6 registration certificate issued under RCW 82.32.030 of the retailer at
7 the premises is subject to revocation, and any licenses issued under
8 this chapter or chapter 82.24 RCW are subject to suspension or
9 revocation by the department.

10 NEW SECTION. **Sec. 6.** (1) For the purposes of obtaining
11 information concerning any matter relating to the administration or
12 enforcement of this chapter, the department, the board, or any of its
13 agents, may inspect the books, documents, or records of any person
14 transporting tobacco products for sale to any person or entity in the
15 state, and books, documents, or records containing any information
16 relating to the transportation or possession of tobacco products for
17 sale in the possession of a specific common carrier as defined in RCW
18 81.80.010 doing business in this state.

19 (2) If a person neglects or refuses to produce and submit for
20 inspection any book, record, or document as required by this section
21 when requested to do so by the department, the board, or its agent,
22 then the department or the board may seek an order in superior court
23 compelling production of the books, records, or documents.

24 **Sec. 7.** RCW 82.26.070 and 1961 c 15 s 82.26.070 are each amended
25 to read as follows:

26 Every person required to be licensed under this chapter who sells
27 tobacco products to persons other than the ultimate consumer shall
28 render with each sale itemized invoices showing the seller's name and
29 address, the purchaser's name and address, the date of sale, and all
30 prices ~~((and discounts))~~. ~~((He))~~ The person shall preserve legible
31 copies of all such invoices for five years from the date of sale.

32 **Sec. 8.** RCW 82.26.100 and 1983 c 3 s 218 are each amended to read
33 as follows:

34 Every ~~((distributor))~~ taxpayer shall report and make returns as

1 provided in RCW 82.32.045. (~~Every registered distributor outside of~~
2 ~~this state shall in like manner report and make returns.~~)

3 **Sec. 9.** RCW 82.26.110 and 1975 1st ex.s. c 278 s 76 are each
4 amended to read as follows:

5 (1) Where tobacco products upon which the tax imposed by this
6 chapter has been reported and paid, are shipped or transported outside
7 this state by the distributor to (~~retailers without the state~~) a
8 person engaged in the business of selling tobacco products, to be sold
9 by (~~those retailers~~) that person, or are returned to the manufacturer
10 by the distributor or destroyed by the distributor, credit of such tax
11 may be made to the distributor in accordance with (~~regulations~~) rules
12 prescribed by the department (~~of revenue~~).

13 (2) Credit allowed under this section shall be determined based on
14 the tax rate in effect for the period for which the tax imposed by this
15 chapter, for which a credit is sought, was paid.

16 NEW SECTION. **Sec. 10.** (1) No person other than (a) a licensed
17 distributor in the distributor's own vehicle, a manufacturer's
18 representative authorized to sell or distribute tobacco products in
19 this state under section 14 of this act, or a licensed retailer in the
20 retailer's own vehicle, or (b) a person who has given notice to the
21 board in advance of the commencement of transportation shall transport
22 or cause to be transported in this state tobacco products for sale.

23 (2) When transporting tobacco products for sale, the person shall
24 have in his or her actual possession, or cause to have in the actual
25 possession of those persons transporting such tobacco products on his
26 or her behalf, invoices or delivery tickets for the tobacco products,
27 which shall show the true name and address of the consignor or seller,
28 the true name and address of the consignee or purchaser, and the
29 quantity and brands of the tobacco products being transported.

30 (3) In any case where the department or the board, or any peace
31 officer of the state, has knowledge or reasonable grounds to believe
32 that any vehicle is transporting tobacco products in violation of this
33 section, the department, the board, or peace officer, is authorized to
34 stop the vehicle and to inspect it for contraband tobacco products.

1 NEW SECTION. **Sec. 11.** (1) The licenses issuable by the department
2 under this chapter are as follows:

3 (a) A distributor's license; and

4 (b) A retailer's license.

5 (2) Application for the licenses shall be made through the master
6 license system under chapter 19.02 RCW. The department may adopt rules
7 regarding the regulation of the licenses. The department may refuse to
8 issue any license under this chapter if the department has reasonable
9 cause to believe that the applicant has willfully withheld information
10 requested for the purpose of determining the eligibility of the
11 applicant to receive a license, or if the department has reasonable
12 cause to believe that information submitted in the application is false
13 or misleading or is not made in good faith. In addition, for the
14 purpose of reviewing an application for a distributor's license and for
15 considering the denial, suspension, or revocation of any such license,
16 the department may consider criminal convictions of the applicant
17 related to the selling of tobacco products within the previous five
18 years in any state, tribal, or federal jurisdiction in the United
19 States, its territories, or possessions, and the provisions of RCW
20 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The
21 department may, in its discretion, issue or refuse to issue the
22 distributor's license, subject to the provisions of section 18 of this
23 act.

24 (3) No person may qualify for a distributor's license under this
25 section without first undergoing a criminal background check. The
26 background check shall be performed by the board and must disclose any
27 criminal convictions related to the selling of tobacco products within
28 the previous five years in any state, tribal, or federal jurisdiction
29 in the United States, its territories, or possessions. If the
30 applicant or licensee also has a license issued under chapter 66.24 or
31 82.24 RCW, the background check done under the authority of chapter
32 66.24 or 82.24 RCW satisfies the requirements of this section.

33 (4) Each license issued under this chapter shall expire on the
34 master license expiration date. The license shall be continued
35 annually if the licensee has paid the required fee and complied with
36 all the provisions of this chapter and the rules of the department
37 adopted pursuant to this chapter.

1 (5) Each license and any other evidence of license as the
2 department requires shall be exhibited in the place of business for
3 which it is issued and in the manner required for the display of a
4 master license.

5 NEW SECTION. **Sec. 12.** (1) A fee of six hundred fifty dollars
6 shall accompany each distributor's license application or license
7 renewal application. If a distributor sells or intends to sell tobacco
8 products at two or more places of business, whether established or
9 temporary, a separate license with a license fee of one hundred fifteen
10 dollars shall be required for each additional place of business.

11 (2) The fees imposed under subsection (1) of this section do not
12 apply to any person applying for a distributor's license or for renewal
13 of a distributor's license if the person has a valid wholesaler's
14 license under RCW 82.24.510 for the place of business associated with
15 the distributor's license application or license renewal application.

16 NEW SECTION. **Sec. 13.** (1) A fee of ninety-three dollars shall
17 accompany each retailer's license application or license renewal
18 application. A separate license is required for each separate location
19 at which the retailer operates.

20 (2) The fee imposed under subsection (1) of this section does not
21 apply to any person applying for a retailer's license or for renewal of
22 a retailer's license if the person has a valid retailer's license under
23 RCW 82.24.510 for the place of business associated with the retailer's
24 license application or renewal application.

25 NEW SECTION. **Sec. 14.** A manufacturer that has manufacturer's
26 representatives who sell or distribute the manufacturer's tobacco
27 products in this state must provide the department a list of the names
28 and addresses of all such representatives and must ensure that the list
29 provided to the department is kept current. A manufacturer's
30 representative is not authorized to distribute or sell tobacco products
31 in this state unless the manufacturer that hired the representative has
32 a valid distributor's license under this chapter and that manufacturer
33 provides the department a current list of all of its manufacturer's
34 representatives as required by this section. A manufacturer's

1 representative must carry a copy of the distributor's license of the
2 manufacturer that hired the representative at all times when selling or
3 distributing the manufacturer's tobacco products.

4 NEW SECTION. **Sec. 15.** The department shall compile and maintain
5 a current record of the names of all distributors and retailers
6 licensed under this chapter and the status of their license or
7 licenses. The information must be updated on a monthly basis and
8 published on the department's official internet web site. This
9 information is not subject to the confidentiality provisions of RCW
10 82.32.330 and shall be disclosed to manufacturers, distributors,
11 retailers, and the general public upon request.

12 NEW SECTION. **Sec. 16.** (1)(a) No person may engage in or conduct
13 business as a distributor or retailer in this state after September 30,
14 2005, without a valid license issued by the department under this
15 chapter. Any person who sells tobacco products to persons other than
16 ultimate consumers or who meets the definition of distributor under RCW
17 82.26.010(3)(d) must obtain a distributor's license under this chapter.
18 Any person who sells tobacco products to ultimate consumers must obtain
19 a retailer's license under this chapter.

20 (b) A violation of this subsection (1) is punishable as a class C
21 felony according to chapter 9A.20 RCW.

22 (2)(a) No person engaged in or conducting business as a distributor
23 or retailer in this state may:

24 (i) Refuse to allow the department or the board, on demand, to make
25 a full inspection of any place of business where any of the tobacco
26 products taxed under this chapter are sold, stored, or handled, or
27 otherwise hinder or prevent such inspection;

28 (ii) Make, use, or present or exhibit to the department or the
29 board any invoice for any of the tobacco products taxed under this
30 chapter that bears an untrue date or falsely states the nature or
31 quantity of the goods invoiced; or

32 (iii) Fail to produce on demand of the department or the board all
33 invoices of all the tobacco products taxed under this chapter within
34 five years prior to such demand unless the person can show by
35 satisfactory proof that the nonproduction of the invoices was due to
36 causes beyond the person's control.

1 (b) No person, other than a licensed distributor or retailer, may
2 transport tobacco products for sale in this state for which the taxes
3 imposed under this chapter have not been paid unless:

4 (i) Notice of the transportation has been given as required under
5 section 10 of this act;

6 (ii) The person transporting the tobacco products actually
7 possesses invoices or delivery tickets showing the true name and
8 address of the consignor or seller, the true name and address of the
9 consignee or purchaser, and the quantity and brands of tobacco products
10 being transported; and

11 (iii) The tobacco products are consigned to or purchased by a
12 person in this state who is licensed under this chapter.

13 (c) A violation of this subsection (2) is a gross misdemeanor.

14 (3) Any person licensed under this chapter as a distributor, and
15 any person licensed under this chapter as a retailer, shall not operate
16 in any other capacity unless the additional appropriate license is
17 first secured. A violation of this subsection (3) is a misdemeanor.

18 (4) The penalties provided in this section are in addition to any
19 other penalties provided by law for violating the provisions of this
20 chapter or the rules adopted under this chapter.

21 NEW SECTION. **Sec. 17.** (1) A retailer that obtains tobacco
22 products from an unlicensed distributor or any other person that is not
23 licensed under this chapter must be licensed both as a retailer and a
24 distributor under this chapter and is liable for the tax imposed under
25 RCW 82.26.020 with respect to the tobacco products acquired from the
26 unlicensed person that are held for sale, handling, or distribution in
27 this state. For the purposes of this subsection, "person" includes
28 both persons defined in RCW 82.26.010(10) and any person immune from
29 state taxation, such as the United States or its instrumentalities, and
30 federally recognized Indian tribes and enrolled tribal members,
31 conducting business within Indian country.

32 (2) Every distributor licensed under this chapter shall sell
33 tobacco products to retailers located in Washington only if the
34 retailer has a current retailer's license under this chapter.

35 NEW SECTION. **Sec. 18.** (1) The board shall enforce this chapter.

1 The board may adopt, amend, and repeal rules necessary to enforce this
2 chapter.

3 (2) The department may adopt, amend, and repeal rules necessary to
4 administer this chapter. The department has full power and authority
5 to revoke or suspend the distributor's or retailer's license of any
6 distributor or retailer of tobacco products in the state upon
7 sufficient cause showing a violation of this chapter or upon the
8 failure of the licensee to comply with any of the rules adopted under
9 it.

10 (3) A license shall not be suspended or revoked except upon notice
11 to the licensee and after a hearing as prescribed by the department.
12 The department, upon finding that the licensee has failed to comply
13 with any provision of this chapter or of any rule adopted under it,
14 shall, in the case of the first offense, suspend the license or
15 licenses of the licensee for a period of not less than thirty
16 consecutive business days, and in the case of a second or further
17 offense, suspend the license or licenses for a period of not less than
18 ninety consecutive business days but not more than twelve months, and
19 in the event the department finds the licensee has been guilty of
20 willful and persistent violations, it may revoke the license or
21 licenses.

22 (4) Any licenses issued under chapter 82.24 RCW to a person whose
23 license or licenses have been suspended or revoked under this section
24 shall also be suspended or revoked during the period of suspension or
25 revocation under this section.

26 (5) Any person whose license or licenses have been revoked under
27 this section may apply to the department at the expiration of one year
28 for a reinstatement of the license or licenses. The license or
29 licenses may be reinstated by the department if it appears to the
30 satisfaction of the department that the licensee will comply with the
31 provisions of this chapter and the rules adopted under it.

32 (6) A person whose license has been suspended or revoked shall not
33 sell tobacco products or cigarettes or permit tobacco products or
34 cigarettes to be sold during the period of suspension or revocation on
35 the premises occupied by the person or upon other premises controlled
36 by the person or others or in any other manner or form.

37 (7) Any determination and order by the department, and any order of
38 suspension or revocation by the department of the license or licenses,

1 or refusal to reinstate a license or licenses after revocation is
2 reviewable by an appeal to the superior court of Thurston county. The
3 superior court shall review the order or ruling of the department and
4 may hear the matter de novo, having due regard to the provisions of
5 this chapter and the duties imposed upon the department and the board.

6 **Sec. 19.** RCW 82.24.550 and 1997 c 420 s 8 are each amended to read
7 as follows:

8 (1) The board shall enforce the provisions of this chapter. The
9 board may adopt, amend, and repeal rules necessary to enforce the
10 provisions of this chapter.

11 (2) The department (~~(of revenue)~~) may adopt, amend, and repeal
12 rules necessary to administer the provisions of this chapter. The
13 department (~~(of revenue)~~) has full power and authority to revoke or
14 suspend the license or permit of any wholesale or retail cigarette
15 dealer in the state upon sufficient cause appearing of the violation of
16 this chapter or upon the failure of such licensee to comply with any of
17 the provisions of this chapter.

18 (3) A license shall not be suspended or revoked except upon notice
19 to the licensee and after a hearing as prescribed by the department
20 (~~(of revenue)~~). The department (~~(of revenue)~~), upon ~~((a))~~ finding ~~((by~~
21 ~~same,))~~ that the licensee has failed to comply with any provision of
22 this chapter or any rule ~~((promulgated thereunder))~~ adopted under this
23 chapter, shall, in the case of the first ~~((offender))~~ offense, suspend
24 the license or licenses of the licensee for a period of not less than
25 thirty consecutive business days, and, in the case of a second or
26 ~~((plural offender))~~ further offense, shall suspend the license or
27 licenses for a period of not less than ninety consecutive business days
28 nor more than twelve months, and, in the event the department (~~(of~~
29 ~~revenue)~~) finds the ~~((offender))~~ licensee has been guilty of willful
30 and persistent violations, it may revoke the license or licenses.

31 (4) Any licenses issued under chapter 82.26 RCW to a person whose
32 license or licenses have been suspended or revoked under this section
33 shall also be suspended or revoked during the period of suspension or
34 revocation under this section.

35 (5) Any person whose license or licenses have been ~~((se))~~ revoked
36 under this section may apply to the department (~~(of revenue)~~) at the
37 expiration of one year for a reinstatement of the license or licenses.

1 The license or licenses may be reinstated by the department (~~of~~
2 ~~revenue~~) if it appears to the satisfaction of the department (~~of~~
3 ~~revenue~~) that the licensee will comply with the provisions of this
4 chapter and the rules (~~promulgated thereunder~~) adopted under this
5 chapter.

6 (~~(5)~~) (6) A person whose license has been suspended or revoked
7 shall not sell cigarettes or tobacco products or permit cigarettes or
8 tobacco products to be sold during the period of such suspension or
9 revocation on the premises occupied by the person or upon other
10 premises controlled by the person or others or in any other manner or
11 form whatever.

12 (~~(6)~~) (7) Any determination and order by the department (~~of~~
13 ~~revenue~~), and any order of suspension or revocation by the department
14 (~~of revenue~~) of the license or licenses, or refusal to reinstate a
15 license or licenses after revocation shall be reviewable by an appeal
16 to the superior court of Thurston county. The superior court shall
17 review the order or ruling of the department (~~of revenue~~) and may
18 hear the matter de novo, having due regard to the provisions of this
19 chapter and the duties imposed upon the department (~~of revenue~~) and
20 the board.

21 (8) For purposes of this section, "tobacco products" has the same
22 meaning as in RCW 82.26.010.

23 NEW SECTION. Sec. 20. (1) Any tobacco products in the possession
24 of a person selling tobacco products in this state acting as a
25 distributor or retailer and who is not licensed as required under
26 section 16 of this act, or a person who is selling tobacco products in
27 violation of section 18(6) of this act, may be seized without a warrant
28 by any agent of the department, agent of the board, or law enforcement
29 officer of this state. Any tobacco products seized under this
30 subsection shall be deemed forfeited.

31 (2) Any tobacco products in the possession of a person who is not
32 a licensed distributor or retailer and who transports tobacco products
33 for sale without having provided notice to the board required under
34 section 10 of this act, or without invoices or delivery tickets showing
35 the true name and address of the consignor or seller, the true name and
36 address of the consignee or purchaser, and the quantity and brands of

1 tobacco products being transported may be seized and are subject to
2 forfeiture.

3 (3) All conveyances, including aircraft, vehicles, or vessels that
4 are used, or intended for use to transport, or in any manner to
5 facilitate the transportation, for the purpose of sale or receipt of
6 tobacco products under subsection (2) of this section, may be seized
7 and are subject to forfeiture except:

8 (a) A conveyance used by any person as a common or contract carrier
9 having in actual possession invoices or delivery tickets showing the
10 true name and address of the consignor or seller, the true name of the
11 consignee or purchaser, and the quantity and brands of the tobacco
12 products transported, unless it appears that the owner or other person
13 in charge of the conveyance is a consenting party or privy to a
14 violation of this chapter;

15 (b) A conveyance subject to forfeiture under this section by reason
16 of any act or omission of which the owner establishes to have been
17 committed or omitted without his or her knowledge or consent; or

18 (c) A conveyance encumbered by a bona fide security interest if the
19 secured party neither had knowledge of nor consented to the act or
20 omission.

21 (4) Property subject to forfeiture under subsections (2) and (3) of
22 this section may be seized by any agent of the department, the board,
23 or law enforcement officer of this state upon process issued by any
24 superior court or district court having jurisdiction over the property.
25 Seizure without process may be made if:

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

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

32 (5) This section shall not be construed to require the seizure of
33 tobacco products if the department's agent, board's agent, or law
34 enforcement officer reasonably believes that the tobacco products are
35 possessed for personal consumption by the person in possession of the
36 tobacco products.

37 (6) Any tobacco products seized by a law enforcement officer shall
38 be turned over to the board as soon as practicable.

1 NEW SECTION. **Sec. 21.** (1) In all cases of seizure of any tobacco
2 products made subject to forfeiture under this chapter, the department
3 or board shall proceed as provided in RCW 82.24.135.

4 (2) When tobacco products are forfeited under this chapter, the
5 department or board may:

6 (a) Retain the property for official use or upon application by any
7 law enforcement agency of this state, another state, or the District of
8 Columbia, or of the United States for the exclusive use of enforcing
9 this chapter or the laws of any other state or the District of Columbia
10 or of the United States; or

11 (b) Sell the tobacco products at public auction to the highest
12 bidder after due advertisement. Before delivering any of the goods to
13 the successful bidder, the department or board shall require the
14 purchaser to pay the proper amount of any tax due. The proceeds of the
15 sale shall be first applied to the payment of all proper expenses of
16 any investigation leading to the seizure and of the proceedings for
17 forfeiture and sale, including expenses of seizure, maintenance of
18 custody, advertising, and court costs. The balance of the proceeds and
19 all money shall be deposited in the general fund of the state. Proper
20 expenses of investigation include costs incurred by any law enforcement
21 agency or any federal, state, or local agency.

22 (3) The department or the board may return any property seized
23 under the provisions of this chapter when it is shown that there was no
24 intention to violate the provisions of this chapter. When any property
25 is returned under this section, the department or the board may return
26 the property to the parties from whom they were seized if and when such
27 parties have paid the proper amount of tax due under this chapter.

28 NEW SECTION. **Sec. 22.** When the department or the board has good
29 reason to believe that any of the tobacco products taxed under this
30 chapter are being kept, sold, offered for sale, or given away in
31 violation of the provisions of this chapter, it may make affidavit of
32 facts describing the place or thing to be searched, before any judge of
33 any court in this state, and the judge shall issue a search warrant
34 directed to the sheriff, any deputy, police officer, or duly authorized
35 agent of the department or the board commanding him or her diligently
36 to search any building, room in a building, place, or vehicle as may be

1 designated in the affidavit and search warrant, and to seize the
2 tobacco products and hold them until disposed of by law.

3 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
4 each repealed:

5 (1) RCW 82.26.025 (Additional tax imposed--Rate--Where deposited)
6 and 2002 c 325 s 3, 1999 c 309 s 926, & 1986 c 3 s 14;

7 (2) RCW 82.26.028 (Surtax imposed--Rate--Health services account)
8 and 2002 c 2 s 4; and

9 (3) RCW 82.26.050 (Certificate of registration required) and 1975
10 1st ex.s. c 278 s 72 & 1961 c 15 s 82.26.050.

11 NEW SECTION. **Sec. 24.** Sections 6, 10 through 18, and 20 through
12 22 of this act are each added to chapter 82.26 RCW.

13 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 July 1, 2005.

Passed by the Senate April 15, 2005.

Passed by the House April 20, 2005.

Approved by the Governor April 23, 2005.

Filed in Office of Secretary of State April 23, 2005.