

HOUSE BILL ANALYSIS

HB 2272

Brief Description: Transferring enforcement provisions regarding cigarette and tobacco taxes to the Liquor Control Board.

Background: The state of Washington imposes a tax on the sale, use, consumption, handling, possession and distribution of cigarettes and tobacco products. Cigarettes are taxed at the rate of \$0.825 cents per pack. Tobacco products are taxed at the rate of 74.9 percent of the wholesale price. In addition to the cigarette and tobacco taxes, sales tax and business and occupation tax are also applicable to the sale of cigarettes and tobacco products.

According to an estimate from the Department of Revenue (DOR), the state will lose \$109 million in tax revenue in Fiscal Year 1997 from the illegal sale of untaxed cigarettes. Revenue losses occur from casual smuggling from states with lower cigarette tax rates than Washington, and from cigarettes purchased from tax-free outlets such as military post exchanges and Indian smokeshops.

Under federal law, the cigarette tax does not apply to cigarettes sold on an Indian reservation to an enrolled tribal member for personal consumption. However, sales made to nontribal members by a tribal cigarette outlet are subject to the tax. The United States Supreme Court has affirmed that the state may impose a cigarette tax on sales made within reservations to nontribal members and has upheld the imposition of minimal burdens on the tribal seller to assist in collecting the tax. Those burdens have included affixing the appropriate stamp to individual cigarette packages and keeping records that distinguish between exempt sales and taxable sales. The ability of the state to take enforcement action on- and off-reservation has been the subject of several lawsuits leaving uncertain the extent of enforcement authority the state may exercise.

In 1996, the Legislature established the cigarette tax and revenue loss advisory committee to study and analyze cigarette tax revenues lost during 1992-95. The study included an analysis of lost cigarette tax revenue and of the revenue losses attributable to cigarette tax increases. The committee also analyzed the feasibility of reducing lost revenue through negotiated agreements between the state and federally-recognized Indian tribes in Washington. The members of the committee did not reach a consensus. The majority recommendation supported a cooperative approach that included negotiated agreements with the tribes. The minority recommendation opposed any agreements with the tribes and suggested that more scrutiny should have been given to enforcing the law against the purchase of un-taxed cigarettes by non-Indian consumers.

The DOR is charged with enforcing the cigarette and tobacco products tax laws and administering and collecting these taxes. Department employees do not have general

police powers and must appoint local law enforcement officers or state patrol officers to act as agents for certain enforcement activities, such as search and seizure.

The Liquor Control Board enforces the Minors Access to Tobacco law and may suspend or revoke retail or wholesale licenses of licensees who violate this law. The Board does not enforce cigarette or tobacco product tax laws. Liquor enforcement officers have general police powers to enforce the state's liquor laws.

Summary: Primary enforcement authority for cigarette and tobacco product tax laws is transferred from the DOR to the Liquor Control Board. The DOR will continue to administer and collect cigarette and tobacco taxes and must appoint enforcement officers of the Liquor Control Board as the department's authorized agents to allow both the department and the board to engage in certain enforcement activities. These officers are not considered employees of the DOR. The Liquor Control Board is given authority to adopt rules necessary to enforce cigarette and tobacco tax laws.

Rules Authority: The bill contains provisions addressing the rule-making powers of an agency.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

