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HOUSE BILL 2218

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Huff, Clements, Alexander, Wensman, Sehlin and Mitchell

Read first time 02/27/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to cigarettes and tobacco; amending RCW 66.44.010,  
2 82.24.010, 82.24.110, 82.24.130, 82.24.190, 82.24.250, 82.24.550, and  
3 82.32.300; adding a new section to chapter 82.24 RCW; adding a new  
4 section to chapter 82.26 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 66.44.010 and 1987 c 202 s 224 are each amended to  
7 read as follows:

8 (1) All county and municipal peace officers are hereby charged with  
9 the duty of investigating and prosecuting all violations of this title,  
10 and the penal laws of this state relating to the manufacture,  
11 importation, transportation, possession, distribution and sale of  
12 liquor, and all fines imposed for violations of this title and the  
13 penal laws of this state relating to the manufacture, importation,  
14 transportation, possession, distribution and sale of liquor shall  
15 belong to the county, city or town wherein the court imposing the fine  
16 is located, and shall be placed in the general fund for payment of the  
17 salaries of those engaged in the enforcement of the provisions of this  
18 title and the penal laws of this state relating to the manufacture,  
19 importation, transportation, possession, distribution and sale of

1 liquor: PROVIDED, That all fees, fines, forfeitures and penalties  
2 collected or assessed by a district court because of the violation of  
3 a state law shall be remitted as provided in chapter 3.62 RCW as now  
4 exists or is later amended.

5 (2) In addition to any and all other powers granted, the board  
6 shall have the power to enforce the penal provisions of this title and  
7 the penal laws of this state relating to the manufacture, importation,  
8 transportation, possession, distribution and sale of liquor.

9 (3) In addition to the other duties under this section, the board  
10 shall enforce chapters 82.24 and 82.26 RCW.

11 (4) The board may appoint and employ, assign to duty and fix the  
12 compensation of, officers to be designated as liquor enforcement  
13 officers. Such liquor enforcement officers shall have the power, under  
14 the supervision of the board, to enforce the penal provisions of this  
15 title and the penal laws of this state relating to the manufacture,  
16 importation, transportation, possession, distribution and sale of  
17 liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall  
18 have the power and authority to serve and execute all warrants and  
19 process of law issued by the courts in enforcing the penal provisions  
20 of this title or of any penal law of this state relating to the  
21 manufacture, importation, transportation, possession, distribution and  
22 sale of liquor. They shall have the power to arrest without a warrant  
23 any person or persons found in the act of violating any of the penal  
24 provisions of this title or of any penal law of this state relating to  
25 the manufacture, importation, transportation, possession, distribution  
26 and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW.

27 **Sec. 2.** RCW 82.24.010 and 1995 c 278 s 1 are each amended to read  
28 as follows:

29 Unless the context clearly requires otherwise, the definitions in  
30 this section apply throughout this chapter:

31 (1) "Board" means the liquor control board.

32 (2) "Cigarette" means any roll for smoking made wholly or in part  
33 of tobacco, irrespective of size or shape and irrespective of the  
34 tobacco being flavored, adulterated, or mixed with any other  
35 ingredient, where such roll has a wrapper or cover made of paper or any  
36 material, except where such wrapper is wholly or in the greater part  
37 made of natural leaf tobacco in its natural state.

1       (~~(2)~~) (3) "Indian tribal organization" means a federally  
2 recognized Indian tribe, or tribal entity, and includes an Indian  
3 wholesaler or retailer that is owned by an Indian who is an enrolled  
4 tribal member conducting business under tribal license or similar  
5 tribal approval within Indian country. For purposes of this chapter  
6 "Indian country" is defined in the manner set forth in 18 U.S.C. Sec.  
7 1151.

8       (~~(3)~~) (4) "Precollection obligation" means the obligation of a  
9 seller otherwise exempt from the tax imposed by this chapter to collect  
10 the tax from that seller's buyer.

11       (~~(4)~~) (5) "Retailer" means every person, other than a wholesaler,  
12 who purchases, sells, offers for sale or distributes any one or more of  
13 the articles taxed herein, irrespective of quantity or amount, or the  
14 number of sales, and all persons operating under a retailer's  
15 registration certificate.

16       (~~(5)~~) (6) "Retail selling price" means the ordinary, customary or  
17 usual price paid by the consumer for each package of cigarettes, less  
18 the tax levied by this chapter and less any similar tax levied by this  
19 state.

20       (~~(6)~~) (7) "Stamp" means the stamp or stamps by use of which the  
21 tax levy under this chapter is paid or identification is made of those  
22 cigarettes with respect to which no tax is imposed.

23       (~~(7)~~) (8) "Wholesaler" means every person who purchases, sells,  
24 or distributes any one or more of the articles taxed herein to  
25 retailers for the purpose of resale only.

26       (~~(8)~~) (9) The meaning attributed, in chapter 82.04 RCW, to the  
27 words "person," "sale," "business" and "successor" applies equally in  
28 this chapter.

29       **Sec. 3.** RCW 82.24.110 and 1995 c 278 s 7 are each amended to read  
30 as follows:

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

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

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

- 1 (c) To use or have in possession knowingly or intentionally any  
2 forged or counterfeit stamps;
- 3 (d) For any person other than the department of revenue or its duly  
4 authorized agent to sell any stamps not affixed to any of the articles  
5 taxed herein whether such stamps are genuine or counterfeit;
- 6 (e) To violate any of the provisions of this chapter;
- 7 (f) To violate any lawful rule made and published by the department  
8 of revenue or the board;
- 9 (g) To use any stamps more than once;
- 10 (h) To refuse to allow the department of revenue or its duly  
11 authorized agent, on demand, to make full inspection of any place of  
12 business where any of the articles herein taxed are sold or otherwise  
13 hinder or prevent such inspection;
- 14 (i) Except as provided in this chapter, for any retailer to have in  
15 possession in any place of business any of the articles herein taxed,  
16 unless the same have the proper stamps attached;
- 17 (j) For any person to make, use, or present or exhibit to the  
18 department of revenue or its duly authorized agent, any invoice for any  
19 of the articles herein taxed which bears an untrue date or falsely  
20 states the nature or quantity of the goods therein invoiced;
- 21 (k) For any wholesaler or retailer or his or her agents or  
22 employees to fail to produce on demand of the department of revenue all  
23 invoices of all the articles herein taxed or stamps bought by him or  
24 her or received in his or her place of business within five years prior  
25 to such demand unless he or she can show by satisfactory proof that the  
26 nonproduction of the invoices was due to causes beyond his or her  
27 control;
- 28 (l) For any person to receive in this state any shipment of any of  
29 the articles taxed herein, when the same are not stamped, for the  
30 purpose of avoiding payment of tax. It is presumed that persons other  
31 than dealers who purchase or receive shipments of unstamped cigarettes  
32 do so to avoid payment of the tax imposed herein;
- 33 (m) For any person to possess or transport in this state a quantity  
34 of sixty thousand cigarettes or less unless the proper stamps required  
35 by this chapter have been affixed or unless: (i) Notice of the  
36 possession or transportation has been given as required by RCW  
37 82.24.250; (ii) the person transporting the cigarettes has in actual  
38 possession invoices or delivery tickets which show the true name and  
39 address of the consignor or seller, the true name and address of the

1 consignee or purchaser, and the quantity and brands of the cigarettes  
2 so transported; and (iii) the cigarettes are consigned to or purchased  
3 by any person in this state who is authorized by this chapter to  
4 possess unstamped cigarettes in this state.

5 (2) It is unlawful for any person knowingly or intentionally to  
6 possess or to transport in this state a quantity in excess of sixty  
7 thousand cigarettes unless the proper stamps required by this chapter  
8 are affixed thereto or unless: (a) Proper notice as required by RCW  
9 82.24.250 has been given; (b) the person transporting the cigarettes  
10 actually possesses invoices or delivery tickets showing the true name  
11 and address of the consignor or seller, the true name and address of  
12 the consignee or purchaser, and the quantity and brands of the  
13 cigarettes so transported; and (c) the cigarettes are consigned to or  
14 purchased by a person in this state who is authorized by this chapter  
15 to possess unstamped cigarettes in this state. Violation of this  
16 section shall be punished as a class C felony under Title 9A RCW.

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

22 **Sec. 4.** RCW 82.24.130 and 1990 c 216 s 5 are each amended to read  
23 as follows:

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

25 (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
26 that are found at any point within this state, which articles are held,  
27 owned, or possessed by any person, and that do not have the stamps  
28 affixed to the packages or containers.

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

33 (i) A conveyance used by any person as a common or contract carrier  
34 having in actual possession invoices or delivery tickets showing the  
35 true name and address of the consignor or seller, the true name of the  
36 consignee or purchaser, and the quantity and brands of the cigarettes  
37 transported, unless it appears that the owner or other person in charge

1 of the conveyance is a consenting party or privy to a violation of this  
2 chapter;

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

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

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

11 (2) Property subject to forfeiture under this chapter may be seized  
12 by any agent of the department authorized to collect taxes, any  
13 enforcement officer of the board, or law enforcement officer of this  
14 state upon process issued by any superior court or district court  
15 having jurisdiction over the property. Seizure without process may be  
16 made if:

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

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

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

28 **Sec. 5.** RCW 82.24.190 and 1987 c 202 s 244 are each amended to  
29 read as follows:

30 When the department of revenue or the board has good reason to  
31 believe that any of the articles taxed herein are being kept, sold,  
32 offered for sale, or given away in violation of the provisions of this  
33 chapter or regulations issued under authority hereof, it may make  
34 affidavit of such fact, describing the place or thing to be searched,  
35 before any judge of any court in this state, and such judge shall issue  
36 a search warrant directed to the sheriff, any deputy, police officer,  
37 or duly authorized agent of the department of revenue commanding him or  
38 her diligently to search any building, room in a building, place or

1 vehicle as may be designated in the affidavit and search warrant, and  
2 to seize such tobacco so possessed and to hold the same until disposed  
3 of by law, and to arrest the person in possession or control thereof.  
4 If upon the return of such warrant, it shall appear that any of the  
5 articles taxed herein, unlawfully possessed, were seized, the same  
6 shall be sold as provided in this chapter.

7       **Sec. 6.** RCW 82.24.250 and 1995 c 278 s 10 are each amended to read  
8 as follows:

9       (1) No person other than: (a) A licensed wholesaler in the  
10 wholesaler's own vehicle; or (b) a person who has given notice to the  
11 (~~department~~) the board in advance of the commencement of  
12 transportation shall transport or cause to be transported in this state  
13 cigarettes not having the stamps affixed to the packages or containers.

14       (2) When transporting unstamped cigarettes, such persons shall have  
15 in their actual possession or cause to have in the actual possession of  
16 those persons transporting such cigarettes on their behalf invoices or  
17 delivery tickets for such cigarettes, which shall show the true name  
18 and address of the consignor or seller, the true name and address of  
19 the consignee or purchaser, and the quantity and brands of the  
20 cigarettes so transported.

21       (3) If the cigarettes are consigned to or purchased by any person  
22 in this state such purchaser or consignee must be a person who is  
23 authorized by chapter 82.24 RCW to possess unstamped cigarettes in this  
24 state.

25       (4) In the absence of the notice of transportation required by this  
26 section or in the absence of such invoices or delivery tickets, or, if  
27 the name or address of the consignee or purchaser is falsified or if  
28 the purchaser or consignee is not a person authorized by chapter 82.24  
29 RCW to possess unstamped cigarettes, the cigarettes so transported  
30 shall be deemed contraband subject to seizure and sale under the  
31 provisions of RCW 82.24.130.

32       (5) Transportation of cigarettes from a point outside this state to  
33 a point in some other state will not be considered a violation of this  
34 section provided that the person so transporting such cigarettes has in  
35 his possession adequate invoices or delivery tickets which give the  
36 true name and address of such out-of-state seller or consignor and such  
37 out-of-state purchaser or consignee.

1 (6) In any case where the department or its duly authorized agent,  
2 or any peace officer of the state, has knowledge or reasonable grounds  
3 to believe that any vehicle is transporting cigarettes in violation of  
4 this section, the department, such agent, or such police officer, is  
5 authorized to stop such vehicle and to inspect the same for contraband  
6 cigarettes.

7 (7) For purposes of this section, the term "person authorized by  
8 chapter 82.24 RCW to possess unstamped cigarettes" means:

9 (a) A wholesaler or retailer, licensed under Washington state law;

10 (b) The United States or an agency thereof; and

11 (c) Any person, including an Indian tribal organization, who, after  
12 notice has been given to the ((department)) board as provided in this  
13 section, brings or causes to be brought into the state unstamped  
14 cigarettes, if within a period of time after receipt of the cigarettes  
15 as the department determines by rule to be reasonably necessary for the  
16 purpose the person has caused stamps to be affixed in accordance with  
17 RCW 82.24.030 or otherwise made payment of the tax required by this  
18 chapter in the manner set forth in rules adopted by the department.

19 **Sec. 7.** RCW 82.24.550 and 1993 c 507 s 17 are each amended to read  
20 as follows:

21 (1) The ((department of revenue)) board shall enforce the  
22 provisions of this chapter ((except RCW 82.24.500, which will be  
23 enforced by the liquor control board)). The board may adopt, amend,  
24 and repeal rules necessary to enforce the provisions of this chapter.

25 (2) The department of revenue may adopt, amend, and repeal rules  
26 necessary to ((enforce and)) administer the provisions of this chapter.  
27 The department of revenue has full power and authority to revoke or  
28 suspend the license or permit of any wholesale or retail cigarette  
29 dealer in the state upon sufficient cause appearing of the violation of  
30 this chapter or upon the failure of such licensee to comply with any of  
31 the provisions of this chapter.

32 ((+2)) (3) A license shall not be suspended or revoked except upon  
33 notice to the licensee and after a hearing as prescribed by the  
34 department of revenue. The department of revenue, upon a finding by  
35 same, that the licensee has failed to comply with any provision of this  
36 chapter or any rule promulgated thereunder, shall, in the case of the  
37 first offender, suspend the license or licenses of the licensee for a  
38 period of not less than thirty consecutive business days, and, in the



1 case of a second or plural offender, shall suspend the license or  
2 licenses for a period of not less than ninety consecutive business days  
3 nor more than twelve months, and, in the event the department of  
4 revenue finds the offender has been guilty of willful and persistent  
5 violations, it may revoke the license or licenses.

6 ~~((+3))~~ (4) Any person whose license or licenses have been so  
7 revoked may apply to the department of revenue at the expiration of one  
8 year for a reinstatement of the license or licenses. The license or  
9 licenses may be reinstated by the department of revenue if it appears  
10 to the satisfaction of the department of revenue that the licensee will  
11 comply with the provisions of this chapter and the rules promulgated  
12 thereunder.

13 ~~((+4))~~ (5) A person whose license has been suspended or revoked  
14 shall not sell cigarettes or permit cigarettes to be sold during the  
15 period of such suspension or revocation on the premises occupied by the  
16 person or upon other premises controlled by the person or others or in  
17 any other manner or form whatever.

18 ~~((+5))~~ (6) Any determination and order by the department of  
19 revenue, and any order of suspension or revocation by the department of  
20 revenue of the license or licenses, or refusal to reinstate a license  
21 or licenses after revocation shall be reviewable by an appeal to the  
22 superior court of Thurston county. The superior court shall review the  
23 order or ruling of the department of revenue and may hear the matter de  
24 novo, having due regard to the provisions of this chapter and the  
25 duties imposed upon the department of revenue and the board.

26 **Sec. 8.** RCW 82.32.300 and 1983 c 3 s 222 are each amended to read  
27 as follows:

28 The administration of this and chapters 82.04 through 82.27 RCW of  
29 this title is vested in the department of revenue which shall prescribe  
30 forms and rules of procedure for the determination of the taxable  
31 status of any person, for the making of returns and for the  
32 ascertainment, assessment and collection of taxes and penalties imposed  
33 thereunder.

34 The department of revenue shall make and publish rules and  
35 regulations, not inconsistent therewith, necessary to enforce ~~((their))~~  
36 provisions of this chapter and chapters 82.02 through 82.23B and 82.27  
37 RCW, and the liquor control board shall make and publish rules  
38 necessary to enforce chapters 82.24 and 82.26 RCW, which shall have the

1 same force and effect as if specifically included therein, unless  
2 declared invalid by the judgment of a court of record not appealed  
3 from.

4 The department may employ such clerks, specialists, and other  
5 assistants as are necessary. Salaries and compensation of such  
6 employees shall be fixed by the department and shall be charged to the  
7 proper appropriation for the department.

8 The department shall exercise general supervision of the collection  
9 of taxes and, in the discharge of such duty, may institute and  
10 prosecute such suits or proceedings in the courts as may be necessary  
11 and proper.

12 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.24 RCW  
13 to read as follows:

14 The department shall appoint, as duly authorized agents,  
15 enforcement officers of the liquor control board to enforce provisions  
16 of this chapter. These officers shall not be considered employees of  
17 the department.

18 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.26 RCW  
19 to read as follows:

20 The department shall appoint, as duly authorized agents,  
21 enforcement officers of the liquor control board to enforce provisions  
22 of this chapter. These officers shall not be considered employees of  
23 the department.

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