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HOUSE BILL 2272

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State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/18/97. Referred to Committee on Appropriations.

1 AN ACT Relating to transferring the enforcement of existing  
2 cigarette and tobacco taxes from the department of revenue to the  
3 liquor control board; amending RCW 66.44.010, 82.24.010, 82.24.110,  
4 82.24.130, 82.24.190, 82.24.250, 82.24.550, and 82.32.300; adding a new  
5 section to chapter 82.24 RCW; adding a new section to chapter 82.26  
6 RCW; and prescribing penalties.

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

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

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

1 title and the penal laws of this state relating to the manufacture,  
2 importation, transportation, possession, distribution and sale of  
3 liquor: PROVIDED, That all fees, fines, forfeitures and penalties  
4 collected or assessed by a district court because of the violation of  
5 a state law shall be remitted as provided in chapter 3.62 RCW as now  
6 exists or is later amended.

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

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

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

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

31 Unless the context clearly requires otherwise, the definitions in  
32 this section apply throughout this chapter:

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

34 (2) "Cigarette" means any roll for smoking made wholly or in part  
35 of tobacco, irrespective of size or shape and irrespective of the  
36 tobacco being flavored, adulterated, or mixed with any other  
37 ingredient, where such roll has a wrapper or cover made of paper or any

1 material, except where such wrapper is wholly or in the greater part  
2 made of natural leaf tobacco in its natural state.

3 ~~((+2))~~ (3) "Indian tribal organization" means a federally  
4 recognized Indian tribe, or tribal entity, and includes an Indian  
5 wholesaler or retailer that is owned by an Indian who is an enrolled  
6 tribal member conducting business under tribal license or similar  
7 tribal approval within Indian country. For purposes of this chapter  
8 "Indian country" is defined in the manner set forth in 18 U.S.C. Sec.  
9 1151.

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

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

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

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

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

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

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

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

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

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

1 82.24.250; (ii) the person transporting the cigarettes has in actual  
2 possession invoices or delivery tickets which show the true name and  
3 address of the consignor or seller, the true name and address of the  
4 consignee or purchaser, and the quantity and brands of the cigarettes  
5 so transported; and (iii) the cigarettes are consigned to or purchased  
6 by any person in this state who is authorized by this chapter to  
7 possess unstamped cigarettes in this state.

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

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

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

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

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

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

36 (i) A conveyance used by any person as a common or contract carrier  
37 having in actual possession invoices or delivery tickets showing the  
38 true name and address of the consignor or seller, the true name of the

1 consignee or purchaser, and the quantity and brands of the cigarettes  
2 transported, unless it appears that the owner or other person in charge  
3 of the conveyance is a consenting party or privy to a violation of this  
4 chapter;

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

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

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

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

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

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

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

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

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

1 or duly authorized agent of the department of revenue commanding him or  
2 her diligently to search any building, room in a building, place or  
3 vehicle as may be designated in the affidavit and search warrant, and  
4 to seize such tobacco so possessed and to hold the same until disposed  
5 of by law, and to arrest the person in possession or control thereof.  
6 If upon the return of such warrant, it shall appear that any of the  
7 articles taxed herein, unlawfully possessed, were seized, the same  
8 shall be sold as provided in this chapter.

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

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

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

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

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

34       (5) Transportation of cigarettes from a point outside this state to  
35 a point in some other state will not be considered a violation of this  
36 section provided that the person so transporting such cigarettes has in  
37 his possession adequate invoices or delivery tickets which give the

1 true name and address of such out-of-state seller or consignor and such  
2 out-of-state purchaser or consignee.

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

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

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

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

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

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

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

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

34 ((+2)) (3) A license shall not be suspended or revoked except upon  
35 notice to the licensee and after a hearing as prescribed by the  
36 department of revenue. The department of revenue, upon a finding by  
37 same, that the licensee has failed to comply with any provision of this  
38 chapter or any rule promulgated thereunder, shall, in the case of the



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

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

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

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

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

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

36 The department of revenue shall make and publish rules and  
37 regulations, not inconsistent therewith, necessary to enforce ~~((their))~~  
38 provisions of this chapter and chapters 82.02 through 82.23B and 82.27

1 RCW, and the liquor control board shall make and publish rules  
2 necessary to enforce chapters 82.24 and 82.26 RCW, which shall have the  
3 same force and effect as if specifically included therein, unless  
4 declared invalid by the judgment of a court of record not appealed  
5 from.

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

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

14 NEW SECTION. Sec. 9. A new section is added to chapter 82.24 RCW  
15 to read as follows:

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

20 NEW SECTION. Sec. 10. A new section is added to chapter 82.26 RCW  
21 to read as follows:

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

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