

2 **SB 5897** - S AMD - 233
3 By Senator Costa

4 ADOPTED 3/17/99

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** (1) Cigarette smoking presents serious
8 public health concerns to the state and to the citizens of the state.
9 The surgeon general has determined that smoking causes lung cancer,
10 heart disease, and other serious diseases and that there are hundreds
11 of thousands of tobacco-related deaths in the United States each year.
12 These diseases most often do not appear until many years after the
13 person in question begins smoking.

14 (2) It is the policy of the state that consumers be adequately
15 informed about the adverse health effects of cigarette smoking by
16 including warning notices on each package of cigarettes.

17 (3) It is the policy of the state that manufacturers and importers
18 of cigarettes not make any material misrepresentation of fact regarding
19 the health consequences of using cigarettes, including compliance with
20 applicable federal laws, regulations, and policies.

21 (4) It is the intent of the legislature to align state law with
22 federal laws, regulations, and policies relating to the manufacture,
23 importation, and marketing of cigarettes, and in particular, the
24 Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 et
25 seq.) and 26 U.S.C. Sec. 5754.

26 (5) The legislature finds that consumers and retailers purchasing
27 cigarettes are entitled to be fully informed about any adverse health
28 effects of cigarette smoking by inclusion of warning notices on each
29 package of cigarettes and to be assured through appropriate enforcement
30 measures that cigarettes they purchase were manufactured for
31 consumption within the United States.

32 **Sec. 2.** RCW 82.24.110 and 1997 c 420 s 4 are each amended to read
33 as follows:

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

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

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

7 (c) To use or have in possession knowingly or intentionally any
8 forged or counterfeit stamps;

9 (d) For any person other than the department of revenue or its duly
10 authorized agent to sell any stamps not affixed to any of the articles
11 taxed herein whether such stamps are genuine or counterfeit;

12 (e) To violate any of the provisions of this chapter;

13 (f) To violate any lawful rule made and published by the department
14 of revenue or the board;

15 (g) To use any stamps more than once;

16 (h) To refuse to allow the department of revenue or its duly
17 authorized agent, on demand, to make full inspection of any place of
18 business where any of the articles herein taxed are sold or otherwise
19 hinder or prevent such inspection;

20 (i) Except as provided in this chapter, for any retailer to have in
21 possession in any place of business any of the articles herein taxed,
22 unless the same have the proper stamps attached;

23 (j) For any person to make, use, or present or exhibit to the
24 department of revenue or its duly authorized agent, any invoice for any
25 of the articles herein taxed which bears an untrue date or falsely
26 states the nature or quantity of the goods therein invoiced;

27 (k) For any wholesaler or retailer or his or her agents or
28 employees to fail to produce on demand of the department of revenue all
29 invoices of all the articles herein taxed or stamps bought by him or
30 her or received in his or her place of business within five years prior
31 to such demand unless he or she can show by satisfactory proof that the
32 nonproduction of the invoices was due to causes beyond his or her
33 control;

34 (l) For any person to receive in this state any shipment of any of
35 the articles taxed herein, when the same are not stamped, for the
36 purpose of avoiding payment of tax. It is presumed that persons other
37 than dealers who purchase or receive shipments of unstamped cigarettes
38 do so to avoid payment of the tax imposed herein;

1 (m) For any person to possess or transport in this state a quantity
2 of sixty thousand cigarettes or less unless the proper stamps required
3 by this chapter have been affixed or unless: (i) Notice of the
4 possession or transportation has been given as required by RCW
5 82.24.250; (ii) the person transporting the cigarettes has in actual
6 possession invoices or delivery tickets which show the true name and
7 address of the consignor or seller, the true name and address of the
8 consignee or purchaser, and the quantity and brands of the cigarettes
9 so transported; and (iii) the cigarettes are consigned to or purchased
10 by any person in this state who is authorized by this chapter to
11 possess unstamped cigarettes in this state;

12 (n) To possess, sell, or transport within this state any container
13 or package of cigarettes that does not comply with this chapter.

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

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

31 **Sec. 3.** RCW 82.24.130 and 1997 c 420 s 5 are each amended to read
32 as follows:

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

34 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
35 that are found at any point within this state, which articles are held,
36 owned, or possessed by any person, and that do not have the stamps
37 affixed to the packages or containers; and any container or package of

1 cigarettes possessed or held for sale that does not comply with this
2 chapter.

3 (b) All conveyances, including aircraft, vehicles, or vessels,
4 which 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 property described in (a) of this subsection, except:

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

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

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

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

22 (2) Property subject to forfeiture under this chapter may be seized
23 by any agent of the department authorized to collect taxes, any
24 enforcement officer of the board, or law enforcement officer of this
25 state upon process issued by any superior court or district court
26 having jurisdiction over the property. Seizure without process may be
27 made if:

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

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

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

1 **Sec. 4.** RCW 82.24.145 and 1987 c 496 s 4 are each amended to read
2 as follows:

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

4 (1) Retain the property or any part thereof for official use or
5 upon application by any law enforcement agency of this state, another
6 state, or the District of Columbia, or of the United States for the
7 exclusive use of enforcing the provisions of this chapter or the laws
8 of any other state or the District of Columbia or of the United States.

9 (2) Sell the property at public auction to the highest bidder after
10 due advertisement, but the department before delivering any of the
11 goods so seized shall require the person to whom the property is sold
12 to affix the proper amount of stamps. The proceeds of the sale and all
13 moneys forfeited under this chapter shall be first applied to the
14 payment of all proper expenses of any investigation leading to the
15 seizure and of the proceedings for forfeiture and sale, including
16 expenses of seizure, maintenance of custody, advertising, and court
17 costs. The balance of the proceeds and all moneys shall be deposited
18 in the general fund of the state. Proper expenses of investigation
19 includes costs incurred by any law enforcement agency or any federal,
20 state, or local agency.

21 (3) Notwithstanding the provisions of subsections (1) and (2) of
22 this section, cigarettes seized for a violation of section 5 of this
23 act shall be sold only for export from the United States to the highest
24 bidder who meets all applicable state and federal requirements to
25 export such cigarettes or destroyed.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.24 RCW
27 to read as follows:

28 (1) No stamp may be affixed to, or made upon, any container or
29 package of cigarettes if:

30 (a) The container or package differs in any respect with the
31 requirements of the Federal Cigarette Labeling and Advertising Act (15
32 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any
33 other information upon a package of cigarettes that is to be sold
34 within the United States;

35 (b) The container or package has been imported into the United
36 States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

37 (c) The container or package, including a container of individually
38 stamped containers or packages, is labeled "For Export Only," "U.S. Tax

1 Exempt," "For Use Outside U.S.," or similar wording indicating that the
2 manufacturer did not intend that the product be sold in the United
3 States; or

4 (d) The container or package has been altered by adding or deleting
5 the wording, labels, or warnings described in (a) or (c) of this
6 subsection.

7 (2) In addition to the penalty and forfeiture provisions otherwise
8 provided for in this chapter, a violation of this section is a
9 deceptive act or practice under the consumer protection act, chapter
10 19.86 RCW.

11 NEW SECTION. **Sec. 6.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately."

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21 ADOPTED 3/17/99

22 On page 1, line 1 of the title, after "cigarettes;" strike the
23 remainder of the title and insert "amending RCW 82.24.110, 82.24.130,
24 and 82.24.145; adding a new section to chapter 82.24 RCW; creating a
25 new section; prescribing penalties; and declaring an emergency."

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