

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1943

58th Legislature
2003 Regular Session

Passed by the House April 21, 2003
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 14, 2003
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1943** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1943

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Finance (originally sponsored by
Representatives McIntire, Delvin, Conway, Gombosky, Armstrong,
Clements, Edwards and Kenney)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to the regulation of counterfeit cigarettes and
2 forfeiture; amending RCW 82.24.020, 82.24.030, 82.24.040, 82.24.050,
3 82.24.110, 82.24.130, 82.24.250, 82.24.260, and 82.24.500; adding a new
4 section to chapter 82.24 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 82.24.020 and 1994 sp.s. c 7 s 904 are each amended to
7 read as follows:

8 (1) There is levied and there shall be collected as provided in
9 this chapter, a tax upon the sale, use, consumption, handling,
10 possession or distribution of all cigarettes, in an amount equal to the
11 rate of eleven and one-half mills per cigarette.

12 (2) An additional tax is imposed upon the sale, use, consumption,
13 handling, possession, or distribution of all cigarettes, in an amount
14 equal to the rate of five and one-fourth mills per cigarette. All
15 revenues collected during any month from this additional tax shall be
16 deposited in the violence reduction and drug enforcement account under
17 RCW 69.50.520 by the twenty-fifth day of the following month.

18 (3) An additional tax is imposed upon the sale, use, consumption,
19 handling, possession, or distribution of all cigarettes, in an amount

1 equal to the rate of ten mills per cigarette through June 30, 1994,
2 eleven and one-fourth mills per cigarette for the period July 1, 1994,
3 through June 30, 1995, twenty mills per cigarette for the period July
4 1, 1995, through June 30, 1996, and twenty and one-half mills per
5 cigarette thereafter. All revenues collected during any month from
6 this additional tax shall be deposited in the health services account
7 created under RCW 43.72.900 by the twenty-fifth day of the following
8 month.

9 (4) Wholesalers (~~and retailers~~) subject to the payment of this
10 tax may, if they wish, absorb one-half mill per cigarette of the tax
11 and not pass it on to purchasers without being in violation of this
12 section or any other act relating to the sale or taxation of
13 cigarettes.

14 (5) For purposes of this chapter, "possession" shall mean both (a)
15 physical possession by the purchaser and, (b) when cigarettes are being
16 transported to or held for the purchaser or his or her designee by a
17 person other than the purchaser, constructive possession by the
18 purchaser or his or her designee, which constructive possession shall
19 be deemed to occur at the location of the cigarettes being so
20 transported or held.

21 **Sec. 2.** RCW 82.24.030 and 1995 c 278 s 2 are each amended to read
22 as follows:

23 (1) In order to enforce collection of the tax hereby levied, the
24 department of revenue shall design and have printed stamps of such size
25 and denominations as may be determined by the department. The stamps
26 must be affixed on the smallest container or package that will be
27 handled, sold, used, consumed, or distributed, to permit the department
28 to readily ascertain by inspection, whether or not such tax has been
29 paid or whether an exemption from the tax applies.

30 (2) Except as otherwise provided in this chapter, (~~every person~~)
31 only a wholesaler shall cause to be affixed on every package of
32 cigarettes, stamps of an amount equaling the tax due thereon or stamps
33 identifying the cigarettes as exempt before he or she sells, offers for
34 sale, uses, consumes, handles, removes, or otherwise disturbs and
35 distributes the same: PROVIDED, That where it is established to the
36 satisfaction of the department that it is impractical to affix such

1 stamps to the smallest container or package, the department may
2 authorize the affixing of stamps of appropriate denomination to a large
3 container or package.

4 (3) Only wholesalers may purchase or obtain cigarette stamps.
5 Wholesalers shall not sell or provide stamps to any other wholesaler or
6 person.

7 (4) Each roll of stamps, or group of sheets, shall have a separate
8 serial number, which shall be legible at the point of sale. The
9 department of revenue shall keep records of which wholesaler purchases
10 each roll or group of sheets. If the department of revenue permits
11 wholesalers to purchase partial rolls or sheets, in no case may stamps
12 bearing the same serial number be sold to more than one wholesaler.
13 The remainder of the roll or sheet, if any, shall either be retained
14 for later purchases by the same wholesaler or destroyed.

15 (5) Nothing in this section shall be construed as limiting any
16 otherwise lawful activity under a cigarette tax compact pursuant to
17 chapter 43.06 RCW.

18 **Sec. 3.** RCW 82.24.040 and 1995 c 278 s 3 are each amended to read
19 as follows:

20 (1) Except as authorized by this chapter, no person other than a
21 licensed wholesaler shall possess in this state unstamped cigarettes.

22 (2) No wholesaler in this state may possess within this state
23 unstamped cigarettes except that:

24 (a) Every wholesaler in the state who is licensed under Washington
25 state law may possess within this state unstamped cigarettes for such
26 period of time after receipt as is reasonably necessary to affix the
27 stamps as required; and

28 (b) Any wholesaler in the state who is licensed under Washington
29 state law and who furnishes a surety bond in a sum satisfactory to the
30 department, shall be permitted to set aside, without affixing the
31 stamps required by this chapter, such part of the wholesaler's stock as
32 may be necessary for the conduct of the wholesaler's business in making
33 sales to persons in another state or foreign country or to
34 instrumentalities of the federal government. Such unstamped stock
35 shall be kept separate and apart from stamped stock.

36 ~~((+2))~~ (3) Every wholesaler licensed under Washington state law
37 shall, at the time of shipping or delivering any of the articles taxed

1 herein to a point outside of this state or to a federal
2 instrumentality, make a true duplicate invoice of the same which shall
3 show full and complete details of the sale or delivery, whether or not
4 stamps were affixed thereto, and shall transmit such true duplicate
5 invoice to the department, at Olympia, not later than the fifteenth day
6 of the following calendar month. For failure to comply with the
7 requirements of this section, the department may revoke the permission
8 granted to the taxpayer to maintain a stock of goods to which the
9 stamps required by this chapter have not been affixed.

10 ~~((3))~~ (4) Unstamped cigarettes possessed by a wholesaler under
11 subsection (2) of this section that are transferred by the wholesaler
12 to another facility of the wholesaler within the borders of Washington
13 shall be transferred in compliance with RCW 82.24.250.

14 (5) Every wholesaler who is licensed by Washington state law shall
15 sell cigarettes to retailers located in Washington only if the retailer
16 has a current cigarette retailer's license or is an Indian tribal
17 organization authorized to possess untaxed cigarettes under this
18 chapter and the rules adopted by the department.

19 (6) Nothing in this section shall be construed as limiting any
20 otherwise lawful activity under a cigarette tax compact pursuant to
21 chapter 43.06 RCW.

22 **Sec. 4.** RCW 82.24.050 and 1995 c 278 s 4 are each amended to read
23 as follows:

24 (1) No retailer in this state may possess unstamped cigarettes
25 within this state (~~except as provided in this chapter~~) unless the
26 person is also a wholesaler in possession of the cigarettes in
27 accordance with RCW 82.24.040.

28 (2) A retailer may obtain cigarettes only from a wholesaler subject
29 to the provisions of this chapter.

30 **Sec. 5.** RCW 82.24.110 and 1999 c 193 s 2 are each amended to read
31 as follows:

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

34 (a) To sell, except as a licensed wholesaler engaged in interstate
35 commerce as to the article being taxed herein, without the stamp first
36 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
18 have in possession in any place of business any of the articles herein
19 taxed, 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

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

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

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

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

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW
29 to read as follows:

30 (1) It is unlawful for any person to knowingly manufacture, sell,
31 or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

32 (a) The cigarette or its packaging bears any reproduction or copy
33 of a trademark, service mark, trade name, label, term, design, or work
34 adopted or used by a manufacturer to identify its own cigarettes; and

35 (b) The cigarette is not manufactured by the owner or holder of
36 that trademark, service mark, trade name, label, term, design, or work,
37 or by any authorized licensee of that person.

1 (2) Any person who violates the provisions of this section is
2 guilty of a class C felony which is punishable by up to five years in
3 prison and a fine of up to ten thousand dollars.

4 (3) Any person who is convicted of a second or subsequent violation
5 of the provisions of this section is guilty of a class B felony which
6 is punishable by up to ten years in prison and a fine of up to twenty
7 thousand dollars.

8 **Sec. 7.** RCW 82.24.130 and 1999 c 193 s 3 are each amended to read
9 as follows:

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

11 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
12 that are found at any point within this state, which articles are held,
13 owned, or possessed by any person, and that do not have the stamps
14 affixed to the packages or containers; ~~((and))~~ any container or package
15 of cigarettes possessed or held for sale that does not comply with this
16 chapter; and any container or package of cigarettes that is
17 manufactured, sold, or possessed in violation of section 6 of this act.

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

22 (i) A conveyance used by any person as a common or contract carrier
23 having in actual possession invoices or delivery tickets showing the
24 true name and address of the consignor or seller, the true name of the
25 consignee or purchaser, and the quantity and brands of the cigarettes
26 transported, unless it appears that the owner or other person in charge
27 of the conveyance is a consenting party or privy to a violation of this
28 chapter;

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

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

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

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

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

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

13 (3) Notwithstanding the foregoing provisions of this section,
14 articles taxed in this chapter which are in the possession of a
15 wholesaler (~~or retailer~~), licensed under Washington state law, for a
16 period of time necessary to affix the stamps after receipt of the
17 articles, shall not be considered contraband unless they are
18 manufactured, sold, or possessed in violation of section 6 of this act.

19 **Sec. 8.** RCW 82.24.250 and 1997 c 420 s 7 are each amended to read
20 as follows:

21 (1) No person other than: (a) A licensed wholesaler in the
22 wholesaler's own vehicle; or (b) a person who has given notice to the
23 board in advance of the commencement of transportation shall transport
24 or cause to be transported in this state cigarettes not having the
25 stamps affixed to the packages or containers.

26 (2) When transporting unstamped cigarettes, such persons shall have
27 in their actual possession or cause to have in the actual possession of
28 those persons transporting such cigarettes on their behalf invoices or
29 delivery tickets for such cigarettes, which shall show the true name
30 and address of the consignor or seller, the true name and address of
31 the consignee or purchaser, and the quantity and brands of the
32 cigarettes so transported.

33 (3) If the cigarettes are consigned to or purchased by any person
34 in this state such purchaser or consignee must be a person who is
35 authorized by this chapter (~~(82.24—RCW)~~) to possess unstamped
36 cigarettes in this state.

1 (4) In the absence of the notice of transportation required by this
2 section or in the absence of such invoices or delivery tickets, or, if
3 the name or address of the consignee or purchaser is falsified or if
4 the purchaser or consignee is not a person authorized by this chapter
5 ((82.24-RCW)) to possess unstamped cigarettes, the cigarettes so
6 transported shall be deemed contraband subject to seizure and sale
7 under the provisions of RCW 82.24.130.

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

14 (6) In any case where the department or its duly authorized agent,
15 or any peace officer of the state, has knowledge or reasonable grounds
16 to believe that any vehicle is transporting cigarettes in violation of
17 this section, the department, such agent, or such police officer, is
18 authorized to stop such vehicle and to inspect the same for contraband
19 cigarettes.

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

22 (a) A wholesaler ((~~or retailer~~)), licensed under Washington state
23 law;

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

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

33 (8) Nothing in this section shall be construed as limiting any
34 otherwise lawful activity under a cigarette tax compact pursuant to
35 chapter 43.06 RCW.

36 **Sec. 9.** RCW 82.24.260 and 1995 c 278 s 11 are each amended to read
37 as follows:

- 1 (1) Other than:
2 (a) A (~~person~~) wholesaler required to be licensed under this
3 chapter;
4 (b) A federal instrumentality with respect to sales to authorized
5 military personnel; or
6 (c) An Indian tribal organization with respect to sales to enrolled
7 members of the tribe,
8 a person who is in lawful possession of unstamped cigarettes and who
9 intends to sell or otherwise dispose of the cigarettes shall pay, or
10 satisfy its precollection obligation that is imposed by this chapter,
11 the tax required by this chapter by remitting the tax or causing stamps
12 to be affixed in the manner provided in rules adopted by the
13 department.
14 (2) When stamps are required to be affixed, the person may deduct
15 from the tax collected the compensation allowable under this chapter.
16 The remittance or the affixing of stamps shall, in the case of
17 cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be
18 made at the same time and manner as required in RCW 82.24.250(7)(c).
19 (3) This section shall not relieve the buyer or possessor of
20 unstamped cigarettes from personal liability for the tax imposed by
21 this chapter.
22 (4) Nothing in this section shall relieve a wholesaler (~~or a~~
23 ~~retailer~~) from the requirements of affixing stamps pursuant to RCW
24 82.24.040 and 82.24.050.

25 **Sec. 10.** RCW 82.24.500 and 1986 c 321 s 4 are each amended to read
26 as follows:

27 No person may engage in or conduct the business of purchasing,
28 selling, consigning, or distributing cigarettes in this state without
29 a license under this chapter. A violation of this section is a
30 (~~misdemeanor~~) class C felony.

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