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SENATE BILL 6345

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State of Washington

58th Legislature

2004 Regular Session

By Senators Hewitt, Keiser, Honeyford, Winsley and Oke; by request of  
Liquor Control Board

Read first time 01/19/2004. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to inspection of books, documents, and records  
2 pertaining to the transportation or possession of cigarettes; amending  
3 RCW 82.24.110; reenacting and amending RCW 82.24.130; 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 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.24 RCW  
7 to read as follows:

8 For the purpose of obtaining information concerning any matter  
9 relating to the administration or enforcement of this title, the board,  
10 or any of its agents, may inspect the books, documents, or records of  
11 any person transporting cigarettes to any person or entity in this  
12 state and books, documents, or records containing any information  
13 relating to the transportation or possession of cigarettes in the  
14 possession of a specific common or contract carrier as defined in RCW  
15 81.80.010 doing business in this state. Failure to allow such  
16 inspection may result in forfeiture and seizure of the cigarettes  
17 pursuant to RCW 82.24.130.

1       **Sec. 2.** RCW 82.24.110 and 2003 c 114 s 5 are each amended to read  
2 as follows:

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

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

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

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

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

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

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

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

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

24       (i) For any retailer to have in possession in any place of business  
25 any of the articles herein taxed, unless the same have the proper  
26 stamps attached;

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

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

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

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

17 (n) To possess, sell, or transport within this state any container  
18 or package of cigarettes that does not comply with this chapter;

19 (o) To fail to produce or allow inspection of books, documents, or  
20 records by the board or its agents as provided in section 1 of this  
21 act.

22 (2) It is unlawful for any person knowingly or intentionally to  
23 possess or to transport in this state a quantity in excess of sixty  
24 thousand cigarettes unless the proper stamps required by this chapter  
25 are affixed thereto or unless: (a) Proper notice as required by RCW  
26 82.24.250 has been given; (b) the person transporting the cigarettes  
27 actually possesses invoices or delivery tickets showing the true name  
28 and address of the consignor or seller, the true name and address of  
29 the consignee or purchaser, and the quantity and brands of the  
30 cigarettes so transported; and (c) the cigarettes are consigned to or  
31 purchased by a person in this state who is authorized by this chapter  
32 to possess unstamped cigarettes in this state. Violation of this  
33 section shall be punished as a class C felony under Title 9A RCW.

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

1       **Sec. 3.** RCW 82.24.130 and 2003 c 114 s 7, 2003 c 113 s 4, and 2003  
2 c 25 s 9 are each reenacted and amended to read as follows:

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

4       (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
5 that are found at any point within this state, which articles are held,  
6 owned, or possessed by any person, and that do not have the stamps  
7 affixed to the packages or containers; any container or package of  
8 cigarettes possessed or held for sale that does not comply with this  
9 chapter; and any container or package of cigarettes that is  
10 manufactured, sold, or possessed in violation of RCW 82.24.570.

11       (b) All conveyances, including aircraft, vehicles, or vessels,  
12 which are used, or intended for use, to transport, or in any manner to  
13 facilitate the transportation, for the purpose of sale or receipt of  
14 property described in (a) of this subsection.

15       (c) Subject to RCW 82.24.250, any articles taxed in this chapter  
16 that are found at any point within this state, which articles are held,  
17 owned, or possessed by any person failing to produce or allow  
18 inspection of books, documents, or records by the board or its agents  
19 as provided in section 1 of this act, except:

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

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

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

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

35       (d) Any cigarettes that are stamped, sold, imported, or offered or  
36 possessed for sale in this state in violation of RCW 70.158.030(3).  
37 For the purposes of this subsection (1)(d), "cigarettes" has the  
38 meaning as provided in RCW 70.158.020(3).

1 (e) All cigarettes sold, delivered, or attempted to be delivered in  
2 violation of RCW 70.155.105.

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

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

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

15 (3) Notwithstanding the foregoing provisions of this section,  
16 articles taxed in this chapter which are in the possession of a  
17 wholesaler, licensed under Washington state law, for a period of time  
18 necessary to affix the stamps after receipt of the articles, shall not  
19 be considered contraband unless they are manufactured, sold, or  
20 possessed in violation of RCW 82.24.570.

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