

HOUSE BILL REPORT

HB 2542

As Reported by House Committee On:
Finance

Title: An act relating to enforcement of cigarette taxes through regulation of stamped and unstamped cigarettes.

Brief Description: Providing for the enforcement of cigarette taxes through regulation of stamped and unstamped cigarettes.

Sponsors: Representative Ericks; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/16/08, 2/6/08 [DP].

Brief Summary of Bill

- Creates an alternative enforcement mechanism related to receiving unstamped cigarettes.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 9 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Conway, Ericks, McIntire, Roach and Santos.

Staff: Rick Peterson (786-7150).

Background:

Cigarettes are subject to tax at a rate of \$2.025 per pack of 20 cigarettes. Revenue from the first 23 cents of the cigarette tax goes to the General Fund. The next 8 cents are dedicated to water quality improvement programs through June 30, 2021, and to the General Fund thereafter. The next \$1.01 goes to the Health Services Account. The next 10.5 cents are dedicated to the Violence Prevention and Drug Enforcement Account. The remaining 60 cents goes to the Education Legacy Trust Account. A portion of the revenue to the Health

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Services Account and the Education Legacy Trust Account is used to reimburse the other accounts for losses in revenue due to tax rate increases.

The retail sales tax applies to the selling price of tangible personal property and certain services purchased at retail. Retail sales and use taxes are also imposed on sales of cigarettes. The tax is levied at a 6.5 percent rate by the state. Cities and counties may levy a local tax. The state and local combined sales tax ranges from 7.5 percent to 8.9 percent.

The Department of Revenue administers and collects the cigarette tax. Enforcement activities are the responsibility of the Liquor Control Board (LCB). In addition, the U. S. Bureau of Alcohol, Tobacco and Firearms (ATF) enforces federal legislation through the Contraband Cigarette Trafficking Act. As part of the enforcement system, state law requires prior notice to the LCB by cigarette importers intending to bring unstamped cigarettes into Washington.

In 2007 the U.S. Court of Appeals – 9th Circuit issued a decision in a case involving transportation of unstamped cigarettes into Washington. In *U. S. v. Smiskin* the court ruled that the state cannot require advanced notice for a member of the Yakama Nation who might be in possession of unstamped cigarettes, because this would violate the member's right to travel freely, a right specified in the 1855 treaty between the Yakama tribe and the federal government.

Summary of Bill:

An intent section affirms the state's intention to honor the treaty rights of the Yakama Nation, while protecting the state's ability to enforce its cigarette tax laws. The right of Yakama tribal members to travel upon all public highways of the state is specifically affirmed

Cigarette tax statutes are amended to augment the ability of the LCB and the ATF to take enforcement actions against violations of federal and state law. New language includes:

- (1) a statement that the state intends to collect its cigarette taxes on sales by a tribe to persons who are not members of the tribe, unless a cigarette tax contract between the tribe and the state is in force;
- (2) a statement that enrolled members of tribes are exempt from state taxes on cigarettes purchased for their own use from the member's own tribal organization. Other purchasers of cigarettes from a tribal organization are not exempt from the state tax. However, any tribal cigarette tax enacted pursuant to a contract with the state takes precedence over the requirement to pay the state cigarette tax;
- (3) the establishment of a gross misdemeanor for processing or receiving 10,000 cigarettes or less and a class C felony to receive more than 10,000 cigarettes unless the proper stamps are applied to the cigarettes or the person is authorized to possess unstamped cigarettes; and

- (4) advance notice to the LCB is required of any purchaser or consignee, including an Indian tribal organization, who receives unstamped cigarettes.
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Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: (In support) This bill provides two alternative cigarette tax enforcement tools. It honors the Yakama Nation's treaty right to travel, and brings Washington law up-to-date with changes made to the federal law related to cigarette tax enforcement. The state relies on the ATF to enforce state cigarette taxes on tribal lands through the Contraband Cigarette Trafficking Act (CCTA.) Under the CCTA a violation of state law is a violation of the CCTA.

Prenotification of the transportation of unstamped cigarettes is a chief tool for enforcing Washington cigarette law. The bill provides for an additional advanced notice requirement so that a transport notice and a receiving notice is required. The bill does not affect licensed cigarette wholesalers who are authorized to import unstamped cigarettes.

(Opposed) None.

Persons Testifying: Stewart Thronson, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.