

# SENATE BILL REPORT

## HB 2542

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As Reported By Senate Committee On:  
Ways & Means, February 25, 2008

**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:** Passed House: 2/18/08, 94-0.

**Committee Activity:** Ways & Means: 2/25/08 [DP]

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

**Staff:** Dianne Criswell (786-7433)

**Background:** The state imposes a tax on the sale, use, consumption, handling, possession, or distribution of cigarettes. The rate of the cigarette tax is 202.5 cents per pack of 20 cigarettes, which equals \$20.25 per carton. Cigarette taxes are added directly to the price of these goods before sales tax is applied. The state sales tax rate is 6.5 percent of the selling price. Local governments may levy additional sales taxes. The combined state and local rate varies from 7 to 8.9 percent, depending on the location. Sales tax on an average carton of cigarettes is about \$4.

Under federal law, the cigarette tax and sales and use taxes do not apply to cigarettes sold on an Indian reservation to an enrolled tribal member for personal consumption. However, in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980), the U.S. Supreme Court held that states may impose tax on sales made by tribal cigarette retailers to non-tribal members. Further, the state may place enforcement measures for such sales that are reasonably necessary and place a minimal burden on tribes.

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

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Alcohol, Tobacco and Firearms (ATF) enforces federal legislation through the Contraband Cigarette Trafficking Act (CCTA). As part of the enforcement system, Washington requires advanced notice to the LCB by cigarette importers intending to bring unstamped cigarettes into Washington.

In a 2007 decision, *U.S. v. Smiskin*, 487 F.3d 1260 (2007), the U.S. Court of Appeals for the 9th Circuit ruled that the state cannot require advanced notice of the transport of unstamped cigarettes by the Yakama Indian Nation and its members, because of the notice requirement that violates their unique treaty right of travel.

**Summary of Bill:** Section 1 affirms the state's intention to honor the right of travel in Article III of the 1855 Yakama Treaty with the Federal Government, while protecting the state's ability to enforce its cigarette tax laws.

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) 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) 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) Updates the threshold quantity of unstamped cigarettes that the CCTA prohibits a person from possessing or transporting to 10,000 (from 60,000). Establishes corresponding criminal liability for possessing or receiving unstamped cigarettes as in current law for transporting unstamped cigarettes: it is a gross misdemeanor for possessing or receiving 10,000 unstamped cigarettes or less, and a class C felony to receive more than 10,000 unstamped cigarettes.
- 4) In addition to advance notice to the LCB under current law for transportation of unstamped cigarettes, notice is required of any purchaser or consignee, including an Indian tribal organization, who receives unstamped cigarettes.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** None.

**Persons Testifying:** No one.