
SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2565

State of Washington 62nd Legislature 2012 1st Special Session

By House Ways & Means (originally sponsored by Representatives Kirby, Harris, Dammeier, Walsh, Orwall, Kelley, Moscoso, and Zeiger)

READ FIRST TIME 02/27/12.

1 AN ACT Relating to persons who operate a roll-your-own cigarette
2 machine at retail establishments; amending RCW 82.24.010, 82.24.030,
3 82.24.035, 82.24.050, 82.24.060, 82.24.110, 82.24.120, 82.24.180,
4 82.24.295, 82.24.500, and 82.24.530; reenacting and amending RCW
5 82.24.130; prescribing penalties; providing an effective date; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 82.24.010 and 1997 c 420 s 3 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter:

12 (1) "Board" means the liquor control board.

13 (2) "Cigarette" means any roll for smoking made wholly or in part
14 of tobacco, irrespective of size or shape and irrespective of the
15 tobacco being flavored, adulterated, or mixed with any other
16 ingredient, where such roll has a wrapper or cover made of paper or any
17 material, except where such wrapper is wholly or in the greater part
18 made of natural leaf tobacco in its natural state. "Cigarette"
19 includes a roll-your-own cigarette.

1 (3) "Cigarette paper" means any paper or any other material except
2 tobacco, prepared for use as a cigarette wrapper.

3 (4) "Cigarette tube" means cigarette paper made into a hollow
4 cylinder for use in making cigarettes.

5 (5) "Commercial cigarette-making machine" means a machine that is
6 operated in a retail establishment and that is capable of being loaded
7 with loose tobacco, cigarette paper or tubes, and any other components
8 related to the production of roll-your-own cigarettes, including
9 filters.

10 (6) "Indian tribal organization" means a federally recognized
11 Indian tribe, or tribal entity, and includes an Indian wholesaler or
12 retailer that is owned by an Indian who is an enrolled tribal member
13 conducting business under tribal license or similar tribal approval
14 within Indian country. For purposes of this chapter "Indian country"
15 is defined in the manner set forth in 18 U.S.C. Sec. 1151.

16 (~~(4)~~) (7) "Precollection obligation" means the obligation of a
17 seller otherwise exempt from the tax imposed by this chapter to collect
18 the tax from that seller's buyer.

19 (~~(5)~~) (8) "Retailer" means every person, other than a wholesaler,
20 who purchases, sells, offers for sale or distributes any one or more of
21 the articles taxed herein, irrespective of quantity or amount, or the
22 number of sales, and all persons operating under a retailer's
23 registration certificate.

24 (~~(6)~~) (9) "Retail selling price" means the ordinary, customary or
25 usual price paid by the consumer for each package of cigarettes, less
26 the tax levied by this chapter and less any similar tax levied by this
27 state.

28 (~~(7)~~) (10) "Roll-your-own cigarettes" means cigarettes produced
29 by a commercial cigarette-making machine.

30 (11) "Stamp" means the stamp or stamps by use of which the tax levy
31 under this chapter is paid or identification is made of those
32 cigarettes with respect to which no tax is imposed.

33 (~~(8)~~) (12) "Wholesaler" means every person who purchases, sells,
34 or distributes any one or more of the articles taxed herein to
35 retailers for the purpose of resale only.

36 (~~(9)~~) (13) The meaning attributed, in chapter 82.04 RCW, to the
37 words "person," "sale," "business" and "successor" applies equally in
38 this chapter.

1 **Sec. 2.** RCW 82.24.030 and 2003 c 114 s 2 are each amended to read
2 as follows:

3 (1) In order to enforce collection of the tax hereby levied, the
4 department of revenue (~~shall~~) must design and have printed stamps of
5 such size and denominations as may be determined by the department.
6 The stamps must be affixed on the smallest container or package that
7 will be handled, sold, used, consumed, or distributed, to permit the
8 department to readily ascertain by inspection, whether or not such tax
9 has been paid or whether an exemption from the tax applies.

10 (2) Except as otherwise provided in this chapter, only a wholesaler
11 (~~shall~~) may cause to be affixed on every package of cigarettes,
12 stamps of an amount equaling the tax due thereon or stamps identifying
13 the cigarettes as exempt before he or she sells, offers for sale, uses,
14 consumes, handles, removes, or otherwise disturbs and distributes the
15 same(~~:-PROVIDED,-That~~). However, where it is established to the
16 satisfaction of the department that it is impractical to affix such
17 stamps to the smallest container or package, the department may
18 authorize the affixing of stamps of appropriate denomination to a large
19 container or package.

20 (3) Except as otherwise provided in this chapter, only wholesalers
21 may purchase or obtain cigarette stamps. Wholesalers (~~shall~~) may not
22 sell or provide stamps to any other wholesaler or person.

23 (4) Each roll of stamps, or group of sheets, (~~shall~~) must have a
24 separate serial number, which (~~shall be~~) is legible at the point of
25 sale. The department of revenue (~~shall~~) must keep records of which
26 wholesaler purchases each roll or group of sheets. If the department
27 of revenue permits wholesalers to purchase partial rolls or sheets, in
28 no case may stamps bearing the same serial number be sold to more than
29 one wholesaler. The remainder of the roll or sheet, if any, (~~shall~~)
30 must either be retained for later purchases by the same wholesaler or
31 destroyed.

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

35 (6) In order to enforce collection of the tax in the case of roll-
36 your-own cigarettes, a retailer must affix a stamp or stamps to each
37 box or similar container provided by the retailer to the consumer. The
38 box or similar container must be used by a consumer to transport roll-

1 your-own cigarettes from the retailer's place of business. A retailer
2 must provide cigarette tubes to a consumer in one or more twenty unit
3 denominations. Stamps must be for an amount equaling the tax due under
4 this chapter. Each cigarette tube or paper provided to the consumer is
5 deemed a cigarette for purposes of imposing and collecting taxes under
6 this chapter. Stamps for roll-your-own cigarettes must be issued and
7 affixed in a manner determined by the department but as consistent as
8 practicable with the stamping requirements for wholesalers.

9 **Sec. 3.** RCW 82.24.035 and 1999 c 193 s 5 are each amended to read
10 as follows:

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

13 (a) The container or package differs in any respect with the
14 requirements of the federal cigarette labeling and advertising act (15
15 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any
16 other information upon a package of cigarettes that is to be sold
17 within the United States;

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

20 (c) The container or package, including a container of individually
21 stamped containers or packages, is labeled "For Export Only," "U.S. Tax
22 Exempt," "For Use Outside U.S.," or similar wording indicating that the
23 manufacturer did not intend that the product be sold in the United
24 States; or

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

28 (2) In addition to the penalty and forfeiture provisions otherwise
29 provided for in this chapter, a violation of this section is a
30 deceptive act or practice under the consumer protection act, chapter
31 19.86 RCW.

32 (3) Subsection (1)(a) of this section does not apply to boxes or
33 similar containers used by a consumer to transport roll-your-own
34 cigarettes.

35 **Sec. 4.** RCW 82.24.050 and 2003 c 114 s 4 are each amended to read
36 as follows:

1 (1) No retailer in this state may possess unstamped cigarettes
2 within this state unless the person is also a wholesaler in possession
3 of the cigarettes in accordance with RCW 82.24.040.

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

6 (3) Only a retailer licensed under this chapter may provide
7 consumers with access to a commercial cigarette-making machine to make
8 roll-your-own cigarettes. A retailer is prohibited from allowing the
9 use of a commercial cigarette-making machine by a person unless,
10 contemporaneously to the person's use of the machine, the retailer
11 provides the consumer with a box or similar container to transport
12 roll-your-own cigarettes and such box is affixed with the appropriate
13 stamp or stamps as required under RCW 82.24.030(6). A consumer must
14 transport roll-your-own cigarettes from a retailer's place of business
15 only in such box or similar container.

16 (4) A commercial cigarette-making machine must have a secure meter
17 that counts the number of cigarettes made, manufactured, or fabricated
18 by the machine and that cannot be accessed, except for the sole purpose
19 of taking meter readings, altered or reset by the machine operator.

20 **Sec. 5.** RCW 82.24.060 and 1961 c 15 s 82.24.060 are each amended
21 to read as follows:

22 (1) Except as otherwise provided in this chapter, stamps ((shall))
23 must be affixed in such manner that they cannot be removed from the
24 package or container without being mutilated or destroyed, which stamps
25 so affixed ((shall be)) are evidence of the tax imposed.

26 (2) In the case of cigarettes contained in individual packages, as
27 distinguished from cartons or larger units, the stamps ((shall)) must
28 be affixed securely on each individual package.

29 (3) With respect to roll-your-own cigarettes, stamps must be
30 affixed securely on each individual box or similar container provided
31 by the retailer to the consumer.

32 **Sec. 6.** RCW 82.24.110 and 2008 c 226 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) For any person other than the department of revenue, its duly
13 authorized agent, or a licensed wholesaler who has lawfully purchased
14 or obtained them to possess any stamps not affixed to any of the
15 articles taxed herein whether such stamps are genuine or counterfeit;
- 16 (f) To violate any of the provisions of this chapter;
- 17 (g) To violate any lawful rule made and published by the department
18 of revenue or the board;
- 19 (h) To use any stamps more than once or any individual stamped box
20 or similar container used to transport roll-your-own cigarettes more
21 than once;
- 22 (i) To refuse to allow the department of revenue or its duly
23 authorized agent, on demand, to make full inspection of any place of
24 business where any of the articles herein taxed are sold or otherwise
25 hinder or prevent such inspection;
- 26 (j) Except as otherwise provided in this chapter, for any retailer
27 to have in possession in any place of business any of the articles
28 herein taxed, unless the same have the proper stamps attached;
- 29 (k) For any person to make, use, or present or exhibit to the
30 department of revenue or its duly authorized agent, any invoice for any
31 of the articles herein taxed which bears an untrue date or falsely
32 states the nature or quantity of the goods therein invoiced;
- 33 (l) For any wholesaler or retailer or his or her agents or
34 employees to fail to produce on demand of the department of revenue all
35 invoices of all the articles herein taxed or stamps bought by him or
36 her or received in his or her place of business within five years prior
37 to such demand unless he or she can show by satisfactory proof that the

1 nonproduction of the invoices was due to causes beyond his or her
2 control;

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

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

19 (o) For any person to possess or receive in this state a quantity
20 of ten thousand cigarettes or less unless the proper stamps required by
21 this chapter have been affixed or unless the person is authorized by
22 this chapter to possess unstamped cigarettes in this state and is in
23 compliance with the requirements of this chapter; (~~and~~)

24 (p) To possess, sell, distribute, purchase, receive, ship, or
25 transport within this state any container or package of cigarettes that
26 does not comply with this chapter; and

27 (q) For a retailer to:

28 (i) Provide consumers with access to a commercial cigarette-making
29 machine without providing a box or similar container that has a
30 properly affixed stamp or stamps; or

31 (ii) Allow a consumer to use a commercial cigarette-making machine
32 for use in making roll-your-own cigarettes with tobacco that is not of
33 a tobacco product manufacturer and brand family listed on the web site
34 directory of the attorney general pursuant to RCW 70.158.030 as having
35 complied with the certification requirements of that statute.

36 (2) It is unlawful for any person knowingly or intentionally to
37 possess or to:

1 (a) Transport in this state a quantity in excess of ten thousand
2 cigarettes unless the proper stamps required by this chapter are
3 affixed thereto or unless: (i) Proper notice as required by RCW
4 82.24.250 has been given; (ii) the person transporting the cigarettes
5 actually possesses invoices or delivery tickets showing the true name
6 and address of the consignor or seller, the true name and address of
7 the consignee or purchaser, and the quantity and brands of the
8 cigarettes so transported; and (iii) the cigarettes are consigned to or
9 purchased by a person in this state who is authorized by this chapter
10 to possess unstamped cigarettes in this state; or

11 (b) Receive in this state a quantity in excess of ten thousand
12 cigarettes unless the proper stamps required by this chapter are
13 affixed thereto or unless the person is authorized by this chapter to
14 possess unstamped cigarettes in this state and is in compliance with
15 this chapter.

16 (3) Violation of (~~(this)~~) subsection (2) (~~(shall-be)~~) of this
17 section is punished as a class C felony under Title 9A RCW.

18 (~~(+3)~~) (4) All agents, employees, and others who aid, abet, or
19 otherwise participate in any way in the violation of the provisions of
20 this chapter or in any of the offenses described in this chapter
21 (~~(shall-be)~~) are guilty and punishable as principals, to the same
22 extent as any wholesaler or retailer or any other person violating this
23 chapter.

24 (~~(+4)~~) (5) For purposes of this section, "person authorized by
25 this chapter to possess unstamped cigarettes in this state" has the
26 same meaning as in RCW 82.24.250.

27 **Sec. 7.** RCW 82.24.120 and 2007 c 111 s 102 are each amended to
28 read as follows:

29 (1) If any person, subject to the provisions of this chapter or any
30 rules adopted by the department of revenue under authority (~~(hereof)~~)
31 of this section, is found to have failed to affix the stamps required,
32 or to have them affixed as (~~(herein)~~) provided in this section, or to
33 pay any tax due (~~(hereunder)~~) under this section, or to have violated
34 any of the provisions of this chapter or rules adopted by the
35 department of revenue in the administration (~~(hereof)~~) of this chapter,
36 there (~~(shall)~~) must be assessed and collected from such person, in
37 addition to any tax that may be found due, a remedial penalty equal to

1 the greater of ten dollars per package of unstamped cigarettes or ten
2 dollars per twenty roll-your-own cigarettes, or two hundred fifty
3 dollars, plus interest on the amount of the tax at the rate as computed
4 under RCW 82.32.050(2) from the date the tax became due until the date
5 of payment, and upon notice mailed to the last known address of the
6 person or provided electronically as provided in RCW 82.32.135. The
7 amount (~~shall become~~) is due and payable in thirty days from the date
8 of the notice. If the amount remains unpaid, the department or its
9 duly authorized agent may make immediate demand upon such person for
10 the payment of all such taxes, penalties, and interest.

11 (2) The department, for good reason shown, may waive or cancel all
12 or any part of penalties imposed, but the taxpayer must pay all taxes
13 due and interest thereon, at the rate as computed under RCW
14 82.32.050(2) from the date the tax became due until the date of
15 payment.

16 (3) The keeping of any unstamped articles coming within the
17 provisions of this chapter (~~shall be~~) is prima facie evidence of
18 intent to violate the provisions of this chapter.

19 (4) This section does not apply to taxes or tax increases due under
20 RCW 82.24.280.

21 **Sec. 8.** RCW 82.24.130 and 2003 c 114 s 7, 2003 c 113 s 4, and 2003
22 c 25 s 9 are each reenacted and amended to read as follows:

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

24 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
25 that are found at any point within this state, which articles are held,
26 owned, or possessed by any person, and that do not have the stamps
27 affixed to the packages or containers; any container or package of
28 cigarettes possessed or held for sale that does not comply with this
29 chapter; and any container or package of cigarettes that is
30 manufactured, sold, or possessed in violation of RCW 82.24.570.

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

35 (i) A conveyance used by any person as a common or contract carrier
36 having in actual possession invoices or delivery tickets showing the
37 true name and address of the consignor or seller, the true name of the

1 consignee or purchaser, and the quantity and brands of the cigarettes
2 transported, unless it appears that the owner or other person in charge
3 of the conveyance is a consenting party or privy to a violation of this
4 chapter;

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

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

11 (c) Any vending machine or commercial cigarette-making machine used
12 for the purpose of violating the provisions of this chapter.

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

17 ~~((e) All cigarettes sold, delivered, or attempted to be delivered
18 in violation of RCW 70.155.105.))~~

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

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

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

31 (3) Notwithstanding the foregoing provisions of this section,
32 articles taxed in this chapter which are in the possession of a
33 wholesaler, licensed under Washington state law, for a period of time
34 necessary to affix the stamps after receipt of the articles, ~~((shall))~~
35 are not ~~((be))~~ considered contraband unless they are manufactured,
36 sold, or possessed in violation of RCW 82.24.570.

1 **Sec. 9.** RCW 82.24.180 and 1996 c 149 s 8 are each amended to read
2 as follows:

3 (1) The department of revenue may return any property seized under
4 the provisions of this chapter when it is shown that there was no
5 intention to violate the provisions thereof.

6 (2) When any property is returned under this section, the
7 department may return such goods to the parties from whom they were
8 seized if and when such parties affix the proper amount of stamps
9 thereto, and pay to the department as penalty an amount equal to the
10 greater of ten dollars per package of unstamped cigarettes or ten
11 dollars per twenty roll-your-own cigarettes, or two hundred fifty
12 dollars, and interest on the amount of the tax at the rate as computed
13 under RCW 82.32.050(2) from the date the tax became due until the date
14 of payment, and in such cases, no advertisement shall be made or
15 notices posted in connection with said seizure.

16 **Sec. 10.** RCW 82.24.295 and 2001 c 235 s 6 are each amended to read
17 as follows:

18 (1) The taxes imposed by this chapter do not apply to the sale,
19 use, consumption, handling, possession, or distribution of cigarettes
20 by an Indian retailer during the effective period of a cigarette tax
21 contract subject to RCW 43.06.455.

22 (2) Effective July 1, 2002, wholesalers and retailers subject to
23 the provisions of this chapter (~~shall be~~) are allowed compensation
24 for their services in affixing the stamps required under this chapter
25 a sum computed at the rate of six dollars per one thousand stamps
26 purchased or affixed by them.

27 (3) In addition to the compensation allowed under subsection (2) of
28 this section, retailers purchasing stamps for roll-your-own cigarettes
29 are allowed additional compensation to offset the cost of the tax under
30 chapter 82.26 RCW. The amount equals five cents per cigarette.

31 **Sec. 11.** RCW 82.24.500 and 2003 c 114 s 10 are each amended to
32 read as follows:

33 No person may engage in or conduct the business of purchasing,
34 selling, consigning, or distributing cigarettes in this state without
35 a license under this chapter, or providing consumers with access to a

1 commercial cigarette-making machine without a license under this
2 chapter. A violation of this section is a class C felony.

3 **Sec. 12.** RCW 82.24.530 and 1993 c 507 s 15 are each amended to
4 read as follows:

5 A fee of ninety-three dollars (~~shall~~) must accompany each
6 retailer's license application or license renewal application. A
7 separate license is required for each separate location at which the
8 retailer operates. A fee of thirty additional dollars for each vending
9 machine (~~shall~~) must accompany each application or renewal for a
10 license issued to a retail dealer operating a cigarette vending
11 machine. An additional fee of ninety-three dollars shall accompany
12 each application or renewal for a license issued to a retail dealer
13 operating a cigarette-making machine.

14 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 July 1, 2012.

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