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THIRD ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2565

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State of Washington                      62nd Legislature                      2012 2nd 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 provide consumers with access to a commercial  
28 cigarette-making machine without providing a box or similar container  
29 that has a properly affixed stamp or stamps.

30 (2) It is unlawful for any person knowingly or intentionally to  
31 possess or to:

32 (a) Transport in this state a quantity in excess of ten thousand  
33 cigarettes unless the proper stamps required by this chapter are  
34 affixed thereto or unless: (i) Proper notice as required by RCW  
35 82.24.250 has been given; (ii) the person transporting the cigarettes  
36 actually possesses invoices or delivery tickets showing the true name  
37 and address of the consignor or seller, the true name and address of  
38 the consignee or purchaser, and the quantity and brands of the

1 cigarettes so transported; and (iii) the cigarettes are consigned to or  
2 purchased by a person in this state who is authorized by this chapter  
3 to possess unstamped cigarettes in this state; or

4 (b) Receive in this state a quantity in excess of ten thousand  
5 cigarettes unless the proper stamps required by this chapter are  
6 affixed thereto or unless the person is authorized by this chapter to  
7 possess unstamped cigarettes in this state and is in compliance with  
8 this chapter.

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

11 ~~((+3))~~ (4) All agents, employees, and others who aid, abet, or  
12 otherwise participate in any way in the violation of the provisions of  
13 this chapter or in any of the offenses described in this chapter  
14 ~~((shall-be))~~ are guilty and punishable as principals, to the same  
15 extent as any wholesaler or retailer or any other person violating this  
16 chapter.

17 ~~((+4))~~ (5) For purposes of this section, "person authorized by  
18 this chapter to possess unstamped cigarettes in this state" has the  
19 same meaning as in RCW 82.24.250.

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

22 (1) If any person, subject to the provisions of this chapter or any  
23 rules adopted by the department of revenue under authority ~~((hereof))~~  
24 of this section, is found to have failed to affix the stamps required,  
25 or to have them affixed as ~~((herein))~~ provided in this section, or to  
26 pay any tax due ~~((hereunder))~~ under this section, or to have violated  
27 any of the provisions of this chapter or rules adopted by the  
28 department of revenue in the administration ~~((hereof))~~ of this chapter,  
29 there ~~((shall))~~ must be assessed and collected from such person, in  
30 addition to any tax that may be found due, a remedial penalty equal to  
31 the greater of ten dollars per package of unstamped cigarettes or ten  
32 dollars per twenty roll-your-own cigarettes, or two hundred fifty  
33 dollars, plus interest on the amount of the tax at the rate as computed  
34 under RCW 82.32.050(2) from the date the tax became due until the date  
35 of payment, and upon notice mailed to the last known address of the  
36 person or provided electronically as provided in RCW 82.32.135. The  
37 amount ~~((shall-become))~~ is due and payable in thirty days from the date



1 of the notice. If the amount remains unpaid, the department or its  
2 duly authorized agent may make immediate demand upon such person for  
3 the payment of all such taxes, penalties, and interest.

4 (2) The department, for good reason shown, may waive or cancel all  
5 or any part of penalties imposed, but the taxpayer must pay all taxes  
6 due and interest thereon, at the rate as computed under RCW  
7 82.32.050(2) from the date the tax became due until the date of  
8 payment.

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

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

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

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

17 (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
18 that are found at any point within this state, which articles are held,  
19 owned, or possessed by any person, and that do not have the stamps  
20 affixed to the packages or containers; any container or package of  
21 cigarettes possessed or held for sale that does not comply with this  
22 chapter; and any container or package of cigarettes that is  
23 manufactured, sold, or possessed in violation of RCW 82.24.570.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) When any property is returned under this section, the  
36 department may return such goods to the parties from whom they were  
37 seized if and when such parties affix the proper amount of stamps

1 thereto, and pay to the department as penalty an amount equal to the  
2 greater of ten dollars per package of unstamped cigarettes or ten  
3 dollars per twenty roll-your-own cigarettes, or two hundred fifty  
4 dollars, and interest on the amount of the tax at the rate as computed  
5 under RCW 82.32.050(2) from the date the tax became due until the date  
6 of payment, and in such cases, no advertisement shall be made or  
7 notices posted in connection with said seizure.

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

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

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

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

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

25 No person may engage in or conduct the business of purchasing,  
26 selling, consigning, or distributing cigarettes in this state without  
27 a license under this chapter, or providing consumers with access to a  
28 commercial cigarette-making machine without a license under this  
29 chapter. A violation of this section is a class C felony.

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

32 A fee of ninety-three dollars (~~shall~~) must accompany each  
33 retailer's license application or license renewal application. A  
34 separate license is required for each separate location at which the  
35 retailer operates. A fee of thirty additional dollars for each vending

1 machine (~~shall~~) must accompany each application or renewal for a  
2 license issued to a retail dealer operating a cigarette vending  
3 machine. An additional fee of ninety-three dollars shall accompany  
4 each application or renewal for a license issued to a retail dealer  
5 operating a cigarette-making machine.

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

--- END ---