

1 5560 AMH CL H2798.1

2 SB 5560 - H COMM AMD

3 By Committee on Commerce & Labor

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 66.28.090 and 1981 1st ex.s. c 5 s 20 are each
8 amended to read as follows:

9 (1) All licensed premises used in the manufacture, storage, or sale
10 of liquor, or any premises or parts of premises used or in any way
11 connected, physically or otherwise, with the licensed business, and/or
12 any premises where a banquet permit has been granted, shall at all
13 times be open to inspection by any liquor and tobacco enforcement
14 officer, inspector, or peace officer.

15 (2) Every person, being on any such premises and having charge
16 thereof, who refuses or fails to admit a liquor and tobacco enforcement
17 officer, inspector, or peace officer demanding to enter therein in
18 pursuance of this section in the execution of ((his/her)) his or her
19 duty, or who obstructs or attempts to obstruct the entry of such liquor
20 and tobacco enforcement officer, inspector, or officer of the peace, or
21 who refuses to allow a liquor and tobacco enforcement officer, and/or
22 an inspector to examine the books of the licensee, or who refuses or
23 neglects to make any return required by this title or the
24 ((regulations)) rules, shall be guilty of a violation of this title."

25 "Sec. 2. RCW 66.44.010 and 1987 c 202 s 224 are each amended to
26 read as follows:

1 (1) All county and municipal peace officers are hereby charged with
2 the duty of investigating and prosecuting all violations of this title,
3 and the penal laws of this state relating to the manufacture,
4 importation, transportation, possession, distribution, and sale of
5 liquor, and all fines imposed for violations of this title and the
6 penal laws of this state relating to the manufacture, importation,
7 transportation, possession, distribution, and sale of liquor shall
8 belong to the county, city, or town wherein the court imposing the fine
9 is located, and shall be placed in the general fund for payment of the
10 salaries of those engaged in the enforcement of the provisions of this
11 title and the penal laws of this state relating to the manufacture,
12 importation, transportation, possession, distribution, and sale of
13 liquor: PROVIDED, That all fees, fines, forfeitures, and penalties
14 collected or assessed by a district court because of the violation of
15 a state law shall be remitted as provided in chapter 3.62 RCW as now
16 exists or is later amended.

17 (2) In addition to any and all other powers granted, the board
18 shall have the power to enforce the penal provisions of this title and
19 the penal laws of this state relating to the manufacture, importation,
20 transportation, possession, distribution, and sale of liquor.

21 (3) In addition to the other duties under this section, the board
22 shall enforce chapters 82.24 and 82.26 RCW.

23 (4) The board may appoint and employ, assign to duty and fix the
24 compensation of, officers to be designated as liquor and tobacco
25 enforcement officers. Such ((liquor)) enforcement officers shall have
26 the power, under the supervision of the board, to enforce the penal
27 provisions of this title and the penal laws of this state relating to
28 the manufacture, importation, transportation, possession, distribution,
29 and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW
30 relating to cigarettes and tobacco. They shall have the power and

1 authority to serve and execute all warrants and process of law issued
2 by the courts in enforcing the penal provisions of this title or of any
3 penal law of this state relating to the manufacture, importation,
4 transportation, possession, distribution, and sale of liquor, and the
5 provisions of chapters 82.24 and 82.26 RCW relating to cigarettes and
6 tobacco. They shall have the power to arrest without a warrant any
7 person or persons found in the act of violating any of the penal
8 provisions of this title or of any penal law of this state relating to
9 the manufacture, importation, transportation, possession, distribution,
10 and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW
11 relating to cigarettes and tobacco."

12 "Sec. 3. RCW 66.44.370 and 1981 1st ex.s. c 5 s 27 are each
13 amended to read as follows:

14 No person shall knowingly or willfully resist or oppose any state,
15 county, or municipal peace officer, or liquor and tobacco enforcement
16 officer, in the discharge of ((his/her)) his or her duties under Title
17 66 RCW, or aid and abet such resistance or opposition. Any person who
18 violates this section shall be guilty of a violation of this title and
19 subject to arrest by any such officer."

20 "Sec. 4. RCW 82.24.010 and 1961 c 15 s 82.24.010 are each amended
21 to read as follows:

22 For the purposes of this chapter, unless otherwise required by the
23 context:

24 (1) "Wholesaler" means every person who purchases, sells, or
25 distributes any one or more of the articles taxed herein to retailers
26 for the purpose of resale only;

27 (2) "Retailer" means every person, other than a wholesaler, who
28 purchases, sells, offers for sale, or distributes any one or more of

1 the articles taxed herein, irrespective of quantity or amount, or the
2 number of sales, and all persons operating under a retailer's
3 registration certificate;

4 (3) (~~"Retail selling price" means the ordinary, customary or usual~~
5 ~~price paid by the consumer for each package of cigarettes, the tax~~
6 ~~levied by this chapter and tax levied by this state;~~

7 ~~(4))~~ "Cigarette" means any roll for smoking made wholly or in part
8 of tobacco, irrespective of size or shape and irrespective of the
9 tobacco being flavored, adulterated, or mixed with any other
10 ingredient, where such roll has a wrapper or cover made of paper or any
11 material, except where such wrapper is wholly or in the greater part
12 made of natural leaf tobacco in its natural state;

13 ~~((5))~~ (4) "Stamp" means the stamp or stamps or meter impressions
14 by use of which the tax levy under this chapter is paid;

15 (5) "Board" means the liquor control board;

16 (6) The meaning attributed, in chapter 82.04 RCW, to the words
17 "person," "sale," "business," and "successor" shall apply equally in
18 the provisions of this chapter."

19 **"Sec. 5.** RCW 82.24.027 and 1986 c 3 s 12 are each amended to read
20 as follows:

21 There is hereby levied and there shall be collected by the
22 (~~department of revenue~~) board from the persons mentioned in and in
23 the manner provided by this chapter, an additional tax upon the sale,
24 use, consumption, handling, possession, or distribution of cigarettes
25 in an amount equal to the rate of four mills per cigarette.

26 The moneys collected under this section shall be deposited in the
27 water quality account under RCW 70.146.030 through June 30, 2021, and
28 in the general fund thereafter."

1 **"Sec. 6.** RCW 82.24.030 and 1990 c 216 s 1 are each amended to read
2 as follows:

3 In order to enforce collection of the tax hereby levied, the
4 (~~department of revenue~~) board shall design and have printed stamps of
5 such size and denominations as may be determined by the (~~department~~)
6 board, such stamps to be affixed on the smallest container or package
7 that will be handled, sold, used, consumed, or distributed, to permit
8 the (~~department~~) board to readily ascertain by inspection, whether or
9 not such tax has been paid. Except as otherwise provided in this
10 chapter, every person shall cause to be affixed on every package of
11 cigarettes, stamps of an amount equaling the tax due thereon before he
12 or she sells, offers for sale, uses, consumes, handles, removes, or
13 otherwise disturbs and distributes the same: PROVIDED, That where it
14 is established to the satisfaction of the (~~department~~) board that it
15 is impractical to affix such stamps to the smallest container or
16 package, the (~~department~~) board may authorize the affixing of stamps
17 of appropriate denomination to a large container or package.

18 The (~~department~~) board may authorize the use of meter stamping
19 machines for imprinting stamps, which imprinted stamps shall be in lieu
20 of those otherwise provided for under this chapter, and if such use is
21 authorized, shall provide reasonable rules (~~and regulations~~) with
22 respect thereto."

23 **"Sec. 7.** RCW 82.24.040 and 1990 c 216 s 2 are each amended to read
24 as follows:

25 No wholesaler in this state may possess within this state
26 unstamped cigarettes except that:

27 (1) Every wholesaler in the state who is licensed under Washington
28 state law may possess within this state unstamped cigarettes for such

1 period of time after receipt as is reasonably necessary to affix the
2 stamps as required; and

3 (2) Any wholesaler in the state who is licensed under Washington
4 state law and who furnishes a surety bond in a sum satisfactory to the
5 ((department)) board, shall be permitted to set aside, without affixing
6 the stamps required by this chapter, such part of ((his)) the
7 wholesaler's stock as may be necessary for the conduct of ((his)) the
8 wholesaler's business in making sales to persons in another state or
9 foreign country, to instrumentalities of the federal government, or to
10 the established governing bodies of any Indian tribe, recognized as
11 such by the United States Department of the Interior. Such unstamped
12 stock shall be kept separate and apart from stamped stock.

13 (3) Every wholesaler licensed under Washington state law shall, at
14 the time of shipping or delivering any of the articles taxed herein to
15 a point outside of this state, or to a federal instrumentality, or to
16 an Indian tribal organization, make a true duplicate invoice of the
17 same which shall show full and complete details of the sale or
18 delivery, whether or not stamps were affixed thereto, and shall
19 transmit such true duplicate invoice to the main office of the
20 ((department)) board, at Olympia, not later than the fifteenth day of
21 the following calendar month, and for failure to comply with the
22 requirements of this section the ((department)) board may revoke the
23 permission granted to the taxpayer to maintain a stock of goods to
24 which the stamps required by this chapter have not been affixed. The
25 ((department)) board may also revoke this permission to maintain a
26 stock of unstamped goods for sale to a specific Indian tribal
27 organization when it appears that sales of unstamped cigarettes to
28 persons who are not enrolled members of a recognized Indian tribe are
29 taking place, or have taken place, within the exterior boundaries of
30 the reservation occupied by that tribe."

1 **"Sec. 8.** RCW 82.24.050 and 1990 c 216 s 3 are each amended to read
2 as follows:

3 ~~((No))~~ Every retailer ~~((in this state may possess unstamped~~
4 ~~cigarettes within this state unless the retailer is licensed under~~
5 ~~Washington state law and, within a period of time after receipt of any~~
6 ~~of the articles taxed herein as is reasonably necessary for the~~
7 ~~purpose, causes the same to have the requisite denomination and amount~~
8 ~~of stamps affixed to represent the tax imposed herein: PROVIDED, That~~
9 ~~those articles to which stamps have been properly affixed by a~~
10 ~~wholesaler or another retailer, licensed under Washington state law,~~
11 ~~may be retained by any retailer, and that those articles intended for~~
12 ~~sale to qualified purchasers may, under rules adopted by the department~~
13 ~~of revenue, be retained by federal instrumentalities and Indian tribal~~
14 ~~organizations, without affixing the stamps required by this chapter))~~
15 shall purchase cigarettes with the stamps affixed."

16 **"Sec. 9.** RCW 82.24.070 and 1987 c 496 s 5 are each amended to read
17 as follows:

18 Wholesalers ~~((and retailers))~~ subject to the provisions of this
19 chapter shall be allowed compensation for their services in affixing
20 the stamps herein required a sum computed at the rate of four dollars
21 per one thousand stamps purchased or affixed by them."

22 **"Sec. 10.** RCW 82.24.090 and 1975 1st ex.s. c 278 s 62 are each
23 amended to read as follows:

24 Every wholesaler or retailer subject to the provisions of this
25 chapter shall keep and preserve for a period of five years an accurate
26 set of records, showing all transactions had with reference to the
27 purchase and sale of any of the articles taxed herein and such persons
28 shall also keep separately all invoices, and shall keep a record of all

1 stamps purchased, and all such records and all stock of taxable
2 articles on hand shall be open to inspection at all reasonable times by
3 the ((~~department of revenue~~)) board or its duly authorized agent.

4 All wholesalers shall within fifteen days after the first day of
5 each month file with the ((~~department of revenue~~)) board a report of
6 all drop shipment sales made by them to retailers within this state
7 during the preceding month, which report shall show the name and
8 address of the retailer to whom the cigarettes were sold, the kind and
9 quantity, and the date of delivery thereof."

10 "Sec. 11. RCW 82.24.110 and 1990 c 216 s 4 are each amended to
11 read as follows:

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

14 (a) To sell, except as a licensed wholesaler or licensed retailer
15 engaged in interstate commerce as to the article being taxed herein,
16 without the stamp first being affixed;

17 (b) To use or have in possession knowingly or intentionally any
18 forged or counterfeit stamps;

19 (c) For any person other than the ((~~department of revenue~~)) board
20 or its duly authorized agent to sell any stamps not affixed to any of
21 the articles taxed herein whether such stamps are genuine or
22 counterfeit;

23 (d) To violate any of the provisions of this chapter;

24 (e) To violate any lawful rule ((~~or regulation~~)) made and published
25 by the ((~~department of revenue~~)) board;

26 (f) To use any stamps more than once;

27 (g) To refuse to allow the ((~~department of revenue~~)) board or any
28 duly authorized agent thereof, on demand, to make full inspection of

1 any place of business where any of the articles herein taxed are sold
2 or otherwise hinder or prevent such inspection;

3 (h) For any retailer(~~(, except one permitted to maintain an~~
4 ~~unstamped stock to engage in interstate business as provided herein,)~~)
5 to have in possession in any place of business any of the articles
6 herein taxed, unless the same have the proper stamps attached;

7 (i) For any person to make, use, or present or exhibit to the
8 (~~department of revenue~~) board or any duly authorized agent thereof,
9 any invoice for any of the articles herein taxed which bears an untrue
10 date or falsely states the nature or quantity of the goods therein
11 invoiced;

12 (j) For any wholesaler or retailer or (~~his or her~~) its agents or
13 employees to fail to produce on demand of the (~~department of revenue~~)
14 board all invoices of all the articles herein taxed or stamps bought
15 (~~by him or her~~) or received in (~~his or her~~) its place of business
16 within five years prior to such demand unless (~~he or she~~) the
17 wholesaler or retailer can show by satisfactory proof that the
18 nonproduction of the invoices was due to causes beyond (~~his~~) its
19 control;

20 (k) For any person to receive in this state any shipment of any of
21 the articles taxed herein, when the same are not stamped, are untaxed,
22 or are untaxed and stamped for the purpose of avoiding payment of tax.
23 It is presumed that persons other than dealers who purchase or receive
24 shipments of unstamped, untaxed, or untaxed stamped cigarettes do so to
25 avoid payment of the tax imposed herein;

26 (l) For any person to possess or transport upon the public
27 highways, roads, or streets of this state a quantity of sixty thousand
28 cigarettes or less (~~unless the proper stamps required by this chapter~~
29 ~~have been affixed~~) that are unstamped, untaxed, or untaxed stamped
30 cigarettes or unless the person transporting the cigarettes has in

1 actual possession invoices or delivery tickets therefor which show the
2 true name and address of the consignor or seller, the true name of the
3 consignee or purchaser, and the quantity and brands of the cigarettes
4 so transported and unless the cigarettes are consigned to or purchased
5 by any person in this state who is a purchaser or consignee authorized
6 by this chapter to possess unstamped, untaxed, or untaxed stamped
7 cigarettes in this state.

8 (2) It is unlawful for any person knowingly or intentionally to
9 possess or to transport upon the public highways, roads, or streets of
10 this state a quantity in excess of sixty thousand cigarettes ((unless
11 the proper stamps required by this chapter are affixed thereto or))
12 that are unstamped, untaxed, or untaxed stamped cigarettes unless the
13 person transporting the cigarettes actually possesses invoices or
14 delivery tickets showing the true name and address of the consignor or
15 seller, the true name of the consignee or purchaser, and the quantity
16 and brands of the cigarettes so transported. Violation of this section
17 shall be punished as a class C felony under Title 9A RCW.

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

24 "Sec. 12. RCW 82.24.120 and 1990 c 267 s 1 are each amended to
25 read as follows:

26 If any person, subject to the provisions of this chapter or any
27 rules ((and regulations)) promulgated by the ((department of revenue))
28 board under authority hereof, is found to have failed to affix the
29 stamps required, or to have them affixed as herein provided, or to pay

1 any tax due hereunder, or to have violated any of the provisions of
2 this chapter or rules ~~((and regulations))~~ promulgated by the
3 ~~((department of revenue))~~ board in the administration hereof, there
4 shall be assessed and collected from such person, in addition to any
5 tax that may be found due, a penalty equal to the greater of ten
6 dollars per package of unstamped cigarettes or two hundred fifty
7 dollars, plus interest thereon at the rate of one percent for each
8 thirty days or portions thereof from the date the tax became due, and
9 upon notice mailed to the last known address of the person said amount
10 shall become due and payable in ten days, at which time the
11 ~~((department))~~ board or its duly authorized agent may make immediate
12 demand upon such person for the payment of all such taxes and
13 penalties. The ~~((department))~~ board, for good reason shown, may remit
14 all or any part of penalties imposed, but the taxpayer must pay all
15 taxes due and interest thereon, at the rate of one percent for each
16 thirty days or portion thereof. The keeping of any unstamped, untaxed,
17 or untaxed stamped articles coming within the provisions of this
18 chapter shall be prima facie evidence of intent to violate the
19 provisions of this chapter."

20 "Sec. 13. RCW 82.24.130 and 1990 c 216 s 5 are each amended to
21 read as follows:

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

23 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
24 that are found at any point within this state, which articles are held,
25 owned, or possessed by any person, and that ~~((do not have the stamps~~
26 ~~affixed to the packages or containers))~~ are unstamped, untaxed, or
27 untaxed and stamped.

28 (b) All conveyances, including aircraft, vehicles, or vessels,
29 which are used, or intended for use, to transport, or in any manner to

1 facilitate the transportation, for the purpose of sale or receipt of
2 property described in (a) of this subsection, except:

3 (i) A conveyance used by any person as a common or contract carrier
4 having in actual possession invoices or delivery tickets showing the
5 true name and address of the consignor or seller, the true name of the
6 consignee or purchaser, and the quantity and brands of the cigarettes
7 transported, unless it appears that the owner or other person in charge
8 of the conveyance is a consenting party or privy to a violation of this
9 chapter;

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

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

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

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

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

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

29 (3) Notwithstanding the foregoing provisions of this section,
30 articles taxed in this chapter which are in the possession of a

1 wholesaler ((~~or retailer~~)), licensed under Washington state law, for a
2 period of time necessary to affix the stamps after receipt of the
3 articles, shall not be considered contraband."

4 "Sec. 14. RCW 82.24.135 and 1987 c 496 s 3 are each amended to
5 read as follows:

6 In all cases of seizure of any property made subject to forfeiture
7 under this chapter the ((~~department~~)) board shall proceed as follows:

8 (1) Forfeiture shall be deemed to have commenced by the seizure.
9 Notice of seizure shall be given to the ((~~department~~)) board
10 immediately if the seizure is made by someone other than an agent of
11 the ((~~department~~)) board authorized to collect taxes.

12 (2) Upon notification or seizure by the ((~~department~~)) board or
13 upon receipt of property subject to forfeiture under this chapter from
14 any other person, the ((~~department~~)) board shall list and particularly
15 describe the property seized in duplicate and have the property
16 appraised by a qualified person not employed by the ((~~department~~))
17 board or acting as its agent. Listing and appraisal of the property
18 shall be properly attested by the ((~~department~~)) board and the
19 appraiser, who shall be allowed a reasonable appraisal fee. No
20 appraisal is required if the property seized is judged by the
21 ((~~department~~)) board to be less than one hundred dollars in value.

22 (3) The ((~~department~~)) board shall cause notice to be served within
23 five days following the seizure or notification to the ((~~department~~))
24 board of the seizure on the owner of the property seized, if known, on
25 the person in charge thereof, and on any other person having any known
26 right or interest therein, of the seizure and intended forfeiture of
27 the seized property. The notice may be served by any method authorized
28 by law or court rule including but not limited to service by mail. If
29 service is by mail it shall be by both certified mail with return

1 receipt requested and regular mail. Service by mail shall be deemed
2 complete upon mailing within the five-day period following the seizure
3 or notification of the seizure to the ((department)) board.

4 (4) If no person notifies the ((department)) board in writing of
5 the person's claim of ownership or right to possession of the items
6 seized within fifteen days of the date of the notice of seizure, the
7 item seized shall be considered forfeited.

8 (5) If any person notifies the ((department)) board, in writing, of
9 the person's claim of ownership or right to possession of the items
10 seized within fifteen days of the date of the notice of seizure, the
11 person or persons shall be afforded a reasonable opportunity to be
12 heard as to the claim or right. The hearing shall be before the
13 ((director)) board or the ((director's)) board's designee, except that
14 any person asserting a claim or right may bring an action for return of
15 the seized items in the superior court of the county in which such
16 property was seized, if the aggregate value of the article or articles
17 involved is more than five hundred dollars. A hearing before the
18 seizing agency and any appeal therefrom shall be in accordance with
19 chapter 34.05 RCW. The burden of proof by a preponderance of the
20 evidence shall be upon the person claiming to be the lawful owner or
21 the person claiming to have the lawful right to possession of the items
22 seized. The ((department)) board shall promptly return the article or
23 articles to the claimant upon a determination that the claimant is the
24 present lawful owner or is lawfully entitled to possession thereof of
25 the items seized."

26 "Sec. 15. RCW 82.24.145 and 1987 c 496 s 4 are each amended to
27 read as follows:

28 When property is forfeited under this chapter the ((department))
29 board may:

1 (1) Retain the property or any part thereof for official use or
2 upon application by any law enforcement agency of this state, another
3 state, or the District of Columbia, or of the United States for the
4 exclusive use of enforcing the provisions of this chapter or the laws
5 of any other state or the District of Columbia or of the United States.

6 (2) Sell the property at public auction to the highest bidder after
7 due advertisement, but the ((department)) board before delivering any
8 of the goods so seized shall require the person to whom the property is
9 sold to affix the proper amount of stamps. The proceeds of the sale
10 and all moneys forfeited under this chapter shall be first applied to
11 the payment of all proper expenses of any investigation leading to the
12 seizure and of the proceedings for forfeiture and sale, including
13 expenses of seizure, maintenance of custody, advertising, and court
14 costs. The balance of the proceeds and all moneys shall be deposited
15 in the general fund of the state. Proper expenses of investigation
16 includes costs incurred by any law enforcement agency or any federal,
17 state, or local agency."

18 "Sec. 16. RCW 82.24.180 and 1990 c 267 s 2 are each amended to
19 read as follows:

20 The ((~~department of revenue~~)) board may return any property seized
21 under the provisions of this chapter when it is shown that there was no
22 intention to violate the provisions thereof.

23 When any property is returned under this section, the
24 ((~~department~~)) board may return such goods to the parties from whom
25 they were seized if and when such parties affix the proper amount of
26 stamps thereto, and pay to the ((~~department~~)) board as penalty an
27 amount equal to the greater of ten dollars per package of unstamped
28 cigarettes or two hundred fifty dollars, and interest thereon at the
29 rate of one percent for each thirty days or portion thereof from the

1 date the tax became due, and in such cases, no advertisement shall be
2 made or notices posted in connection with said seizure."

3 "Sec. 17. RCW 82.24.190 and 1987 c 202 s 244 are each amended to
4 read as follows:

5 When the ((~~department of revenue~~)) board has good reason to believe
6 that any of the articles taxed herein are being kept, sold, offered for
7 sale, or given away in violation of the provisions of this chapter or
8 ((~~regulations~~)) rules issued under authority hereof, it may make
9 affidavit of such fact, describing the place or thing to be searched,
10 before any judge of any court in this state, and such judge shall issue
11 a search warrant directed to the sheriff, any deputy, police officer,
12 or duly authorized agent of the ((~~department of revenue~~)) board
13 commanding him or her diligently to search any building, room in a
14 building, place, or vehicle as may be designated in the affidavit and
15 search warrant, and to seize such tobacco so possessed and to hold the
16 same until disposed of by law, and to arrest the person in possession
17 or control thereof. If upon the return of such warrant, it shall appear
18 that any of the articles taxed herein, unlawfully possessed, were
19 seized, the same shall be sold as provided in this chapter."

20 "Sec. 18. RCW 82.24.210 and 1975 1st ex.s. c 278 s 68 are each
21 amended to read as follows:

22 The ((~~department of revenue~~)) board may promulgate rules ((~~and~~
23 ~~regulations~~)) providing for the refund to dealers for the cost of
24 stamps affixed to articles taxed herein, which by reason of damage
25 become unfit for sale and are destroyed by the dealer or returned to
26 the manufacturer or jobber. In the case of any articles to which
27 stamps have been affixed, and which articles have been sold and shipped
28 to a regular dealer in such articles in another state, the seller in

1 this state shall be entitled to a refund of the actual amount of the
2 stamps so affixed, less the affixing discount, upon condition that the
3 seller in this state makes affidavit that the articles were sold and
4 shipped outside of the state and that ((he)) the seller has received
5 from the purchaser outside the state a written acknowledgment that
6 ((he)) the purchaser has received such articles with the amount of
7 stamps affixed thereto, together with the name and address of such
8 purchaser. The ((department of revenue)) board may redeem any unused
9 stamps purchased from it at the face value thereof less the affixing
10 discount."

11 **"Sec. 19.** RCW 82.24.230 and 1961 c 15 s 82.24.230 are each amended
12 to read as follows:

13 All of the provisions contained in chapter 82.32 RCW except RCW
14 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270 shall have
15 full force and application with respect to taxes imposed under the
16 provisions of this chapter(~~(, except the following sections thereof:~~
17 ~~RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100 and 82.32.270)~~); except
18 that "department of revenue" or "department" means the liquor control
19 board."

20 **"Sec. 20.** RCW 82.24.250 and 1990 c 216 s 6 are each amended to
21 read as follows:

22 No person other than (1) a licensed wholesaler in its own vehicle,
23 or (2) a person who has given notice to the ((department)) board in
24 advance of the commencement of transportation shall transport or cause
25 to be transported unstamped, untaxed, or untaxed stamped cigarettes
26 ~~((not having the stamps affixed to the packages or containers))~~, upon
27 the public highways, roads, or streets of this state. In the case of
28 transportation of unstamped cigarettes such persons shall have in their

1 actual possession invoices or delivery tickets for such cigarettes,
2 which shall show the true name and address of the consignor or seller,
3 the true name of the consignee or purchaser, and the quantity and
4 brands of the cigarettes so transported. If the cigarettes are
5 consigned to or purchased by any person in this state such purchaser or
6 consignee must be a person who is authorized by chapter 82.24 RCW to
7 possess unstamped, untaxed, or untaxed stamped cigarettes in this
8 state. In the absence of such invoices or delivery tickets, or, if the
9 name or address of the consignee or purchaser is falsified or if the
10 purchaser or consignee is not authorized by chapter 82.24 RCW to
11 possess unstamped, untaxed, or untaxed stamped cigarettes, the
12 cigarettes so transported shall be deemed contraband subject to seizure
13 and sale under the provisions of RCW 82.24.130.

14 Transportation of cigarettes from a point outside this state to a
15 point in some other state will not be considered a violation of this
16 section provided that the person so transporting such cigarettes has in
17 his or her possession adequate invoices or delivery tickets which give
18 the true name and address of such out-of-state seller or consignor and
19 such out-of-state purchaser or consignee.

20 In any case where the ((department)) board or its duly authorized
21 agent, or any peace officer of the state, has knowledge or reasonable
22 grounds to believe that any vehicle is transporting cigarettes in
23 violation of this section, the ((department)) board, such agent, or
24 such police officer, is authorized to stop such vehicle and to inspect
25 the same for contraband cigarettes.

26 For purposes of this section, the term "person authorized by
27 chapter 82.24 RCW to possess unstamped, untaxed, or untaxed stamped
28 cigarettes" shall mean a wholesaler or retailer, licensed under
29 Washington state law, the United States or an agency thereof, and any
30 Indian tribal organization authorized under rules adopted by the

1 ((~~department of revenue~~)) board to possess ((~~unstamped cigarettes~~))
2 these articles."

3 "Sec. 21. RCW 82.24.510 and 1986 c 321 s 5 are each amended to
4 read as follows:

5 (1) The licenses issuable under this chapter are as follows:

6 (a) A wholesaler's license.

7 (b) A retailer's license.

8 (c) A vending machine license.

9 (2) Application for the licenses shall be made through the master
10 license system under chapter 19.02 RCW. The ((~~department of revenue~~))
11 board shall adopt rules regarding the regulation of the licenses. The
12 ((~~department of revenue~~)) board may refrain from the issuance of any
13 license under this chapter if the ((~~department~~)) board has reasonable
14 cause to believe that the applicant has willfully withheld information
15 requested for the purpose of determining the eligibility of the
16 applicant to receive a license, or if the ((~~department~~)) board has
17 reasonable cause to believe that information submitted in the
18 application is false or misleading or is not made in good faith. Each
19 such license shall expire on the master license expiration date, and
20 each such license shall be continued annually if the licensee has paid
21 the required fee and complied with all the provisions of this chapter
22 and the rules of the ((~~department of revenue~~)) board made pursuant
23 thereto."

24 "Sec. 22. RCW 82.24.520 and 1986 c 321 s 6 are each amended to
25 read as follows:

26 A fee of six hundred fifty dollars shall accompany each
27 wholesaler's license application or license renewal application. If a
28 wholesaler sells or intends to sell cigarettes at two or more places of

1 business, whether established or temporary, a separate license with a
2 license fee of one hundred fifteen dollars shall be required for each
3 additional place of business. Each license, or certificate thereof,
4 and such other evidence of license as the ((department of revenue))
5 board requires, shall be exhibited in the place of business for which
6 it is issued and in such manner as is prescribed for the display of a
7 master license. The ((department of revenue)) board shall require each
8 licensed wholesaler to file with the ((department)) board a bond in an
9 amount not less than ((one)) five thousand dollars to guarantee the
10 proper performance of the duties and the discharge of the liabilities
11 under this chapter. The bond shall be executed by such licensed
12 wholesaler as principal, and by a corporation approved by the
13 ((department of revenue)) board and authorized to engage in business as
14 a surety company in this state, as surety. The bond shall run
15 concurrently with the wholesaler's license."

16 "Sec. 23. RCW 82.24.550 and 1986 c 321 s 9 are each amended to
17 read as follows:

18 (1) The ((department of revenue)) board shall enforce the
19 provisions of this chapter. The ((department of revenue)) board may
20 adopt, amend, and repeal rules necessary to enforce and administer the
21 provisions of this chapter. The ((department of revenue)) board has
22 full power and authority to revoke or suspend the license or permit of
23 any wholesale or retail cigarette dealer in the state upon sufficient
24 cause appearing of the violation of this chapter or upon the failure of
25 such licensee to comply with any of the provisions of this chapter.

26 (2) A license shall not be suspended or revoked except upon notice
27 to the licensee and after a hearing as prescribed by the ((department
28 of revenue)) board. The ((department of revenue)) board, upon a
29 finding by same, that the licensee has failed to comply with any

1 provision of this chapter or any rule promulgated thereunder, shall, in
2 the case of the first offender, suspend the license or licenses of the
3 licensee for a period of not less than thirty consecutive business
4 days, and, in the case of a second or plural offender, shall suspend
5 the license or licenses for a period of not less than ninety
6 consecutive business days nor more than twelve months, and, in the
7 event the ((department of revenue)) board finds the offender has been
8 guilty of willful and persistent violations, it may revoke the license
9 or licenses.

10 (3) Any person whose license or licenses have been so revoked may
11 apply to the ((department of revenue)) board at the expiration of one
12 year for a reinstatement of the license or licenses. The license or
13 licenses may be reinstated by the ((department of revenue)) board if it
14 appears to the satisfaction of the ((department of revenue)) board that
15 the licensee will comply with the provisions of this chapter and the
16 rules promulgated thereunder.

17 (4) A person whose license has been suspended or revoked shall not
18 sell cigarettes or permit cigarettes to be sold during the period of
19 such suspension or revocation on the premises occupied by the person or
20 upon other premises controlled by the person or others or in any other
21 manner or form whatever.

22 (5) Any determination and order by the ((department of revenue))
23 board, and any order of suspension or revocation by the ((department of
24 revenue)) board of the license or licenses, or refusal to reinstate a
25 license or licenses after revocation shall be reviewable by an appeal
26 to the superior court of Thurston county. The superior court shall
27 review the order or ruling of the ((department of revenue)) board and
28 may hear the matter de novo, having due regard to the provisions of
29 this chapter and the duties imposed upon the ((department of revenue))
30 board."

1 **"Sec. 24.** RCW 82.24.560 and 1986 c 321 s 10 are each amended to
2 read as follows:

3 All fees and penalties received or collected by the (~~department of~~
4 ~~revenue~~) board pursuant to this chapter shall be paid to the state
5 treasurer, to be credited to the general fund."

6 "NEW SECTION. **Sec. 25.** A new section is added to chapter 82.24
7 RCW to read as follows:

8 The board may adopt rules to implement this chapter."

9 **"Sec. 26.** RCW 82.26.010 and 1975 1st ex.s. c 278 s 70 are each
10 amended to read as follows:

11 As used in this chapter:

12 (1) "Tobacco products" means cigars, cheroots, stogies, periques,
13 granulated, plug cut, crimp cut, ready rubbed, and other smoking
14 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
15 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
16 cuttings, and sweepings of tobacco, and other kinds and forms of
17 tobacco, prepared in such manner as to be suitable for chewing or
18 smoking in a pipe or otherwise, or both for chewing and smoking, but
19 shall not include cigarettes as defined in RCW 82.24.010(~~(4)~~);

20 (2) "Manufacturer" means a person who manufactures and sells
21 tobacco products;

22 (3) "Distributor" means (a) any person engaged in the business of
23 selling tobacco products in this state who brings, or causes to be
24 brought, into this state from without the state any tobacco products
25 for sale, (b) any person who makes, manufactures, or fabricates tobacco
26 products in this state for sale in this state, (c) any person engaged
27 in the business of selling tobacco products without this state who

1 ships or transports tobacco products to retailers in this state, to be
2 sold by those retailers;

3 (4) "Subjobber" means any person, other than a manufacturer or
4 distributor, who buys tobacco products from a distributor and sells
5 them to persons other than the ultimate consumers;

6 (5) "Retailer" means any person engaged in the business of selling
7 tobacco products to ultimate consumers;

8 (6) "Sale" means any transfer, exchange, or barter, in any manner
9 or by any means whatsoever, for a consideration, and includes and means
10 all sales made by any person. It includes a gift by a person engaged
11 in the business of selling tobacco products, for advertising, as a
12 means of evading the provisions of this chapter, or for any other
13 purposes whatsoever.

14 (7) "Wholesale sales price" means the established price for which
15 a manufacturer sells a tobacco product to a distributor, exclusive of
16 any discount or other reduction;

17 (8) "Business" means any trade, occupation, activity, or enterprise
18 engaged in for the purpose of selling or distributing tobacco products
19 in this state;

20 (9) "Place of business" means any place where tobacco products are
21 sold or where tobacco products are manufactured, stored, or kept for
22 the purpose of sale or consumption, including any vessel, vehicle,
23 airplane, train, or vending machine;

24 (10) "Retail outlet" means each place of business from which
25 tobacco products are sold to consumers;

26 (11) (~~("Department" means the state department of revenue)~~) "Board"
27 means the liquor control board.

28 **"Sec. 27.** RCW 82.26.050 and 1975 1st ex.s. c 278 s 72 are each
29 amended to read as follows:

1 (~~From and after July 1, 1959~~) No person shall engage in the
2 business of a distributor or subjobber of tobacco products at any place
3 of business without first having received from the (~~department of~~
4 ~~revenue~~) board a certificate of registration (~~as provided in RCW~~
5 ~~82.32.030~~))."

6 "**Sec. 28.** RCW 82.26.060 and 1975 1st ex.s. c 278 s 73 are each
7 amended to read as follows:

8 Every distributor shall keep at each registered place of business
9 complete and accurate records for that place of business, including
10 itemized invoices, of tobacco products held, purchased, manufactured,
11 brought in or caused to be brought in from without the state, or
12 shipped or transported to retailers in this state, and of all sales of
13 tobacco products made, except sales to the ultimate consumer.

14 These records shall show the names and addresses of purchasers(~~(~~
15 ~~the inventory of all tobacco products on hand on July 1, 1959,~~) and
16 other pertinent papers and documents relating to the purchase, sale, or
17 disposition of tobacco products.

18 When a registered distributor sells tobacco products exclusively to
19 the ultimate consumer at the address given in the certificate, no
20 invoice of those sales shall be required, but itemized invoices shall
21 be made of all tobacco products transferred to other retail outlets
22 owned or controlled by that registered distributor. All books,
23 records, and other papers and documents required by this section to be
24 kept shall be preserved for a period of at least five years after the
25 date of the documents, as aforesaid, or the date of the entries thereof
26 appearing in the records, unless the (~~department of revenue~~) board,
27 in writing, authorizes their destruction or disposal at an earlier
28 date. At any time during usual business hours the (~~department~~)
29 board, or its duly authorized agents or employees, may enter any place

1 of business of a distributor, without a search warrant, and inspect the
2 premises, the records required to be kept under this chapter, and the
3 tobacco products contained therein, to determine whether or not all the
4 provisions of this chapter are being fully complied with. If the
5 ((department)) board, or any of its agents or employees, are denied
6 free access or are hindered or interfered with in making such
7 examination, the registration certificate of the distributor at such
8 premises shall be subject to revocation by the ((department)) board."

9 "Sec. 29. RCW 82.26.080 and 1975 1st ex.s. c 278 s 74 are each
10 amended to read as follows:

11 Every retailer and subjobber shall procure itemized invoices of all
12 tobacco products purchased. The invoices shall show the name and
13 address of the seller and the date of purchase. The retailer and
14 subjobber shall preserve a legible copy of each such invoice for five
15 years from the date of purchase. Invoices shall be available for
16 inspection by the ((~~department of revenue~~)) board or its authorized
17 agents or employees at the retailer's or subjobber's place of
18 business."

19 "Sec. 30. RCW 82.26.090 and 1975 1st ex.s. c 278 s 75 are each
20 amended to read as follows:

21 Records of all deliveries or shipments of tobacco products from any
22 public warehouse of first destination in this state shall be kept by
23 the warehouse and be available to the ((~~department of revenue~~)) board
24 for inspection. They shall show the name and address of the consignee,
25 the date, the quantity of tobacco products delivered, and such other
26 information as the ((department)) board may require. These records
27 shall be preserved for five years from the date of delivery of the
28 tobacco products."

1 **"Sec. 31.** RCW 82.26.110 and 1975 1st ex.s. c 278 s 76 are each
2 amended to read as follows:

3 Where tobacco products upon which the tax imposed by this chapter
4 has been reported and paid, are shipped or transported by the
5 distributor to retailers without the state, to be sold by those
6 retailers, or are returned to the manufacturer by the distributor or
7 destroyed by the distributor, credit of such tax may be made to the
8 distributor in accordance with (~~regulations~~) rules prescribed by the
9 (~~department of revenue~~) board."

10 **"Sec. 32.** RCW 82.26.120 and 1963 ex.s. c 28 s 5 are each amended
11 to read as follows:

12 All of the provisions contained in chapter 82.32 RCW shall have
13 full force and application with respect to taxes imposed under the
14 provisions of this chapter; except that "department of revenue" or
15 "department" means the liquor control board."

16 "NEW SECTION. **Sec. 33.** A new section is added to chapter 82.26
17 RCW to read as follows:

18 The board may adopt rules to implement this chapter."

19 "NEW SECTION. **Sec. 34.** A new section is added to chapter 82.32
20 RCW to read as follows:

21 The liquor control board may contract with the department for the
22 collection of taxes, penalties, and interest, and the making of
23 refunds, related to the administration and enforcement of chapters
24 82.24 and 82.26 RCW."

25 "NEW SECTION. **Sec. 35.** All powers, duties, and functions of the
26 department of revenue pertaining to chapters 82.24 and 82.26 RCW are

1 transferred to the liquor control board. All references to the
2 director or department of revenue in the Revised Code of Washington
3 shall be construed to mean the liquor control board when referring to
4 the functions transferred in this section."

5 "NEW SECTION. Sec. 36. All reports, documents, surveys, books,
6 records, files, papers, or written material in the possession of the
7 department of revenue pertaining to the powers, functions, and duties
8 transferred shall be delivered to the custody of the liquor control
9 board. All cabinets, furniture, office equipment, motor vehicles, and
10 other tangible property employed by the department of revenue in
11 carrying out the powers, functions, and duties transferred shall be
12 made available to the liquor control board. All funds, credits, or
13 other assets held in connection with the powers, functions, and duties
14 transferred shall be assigned to the liquor control board.

15 Any appropriations made to the department of revenue for carrying
16 out the powers, functions, and duties transferred shall, on the
17 effective date of this section, be transferred and credited to the
18 liquor control board.

19 Whenever any question arises as to the transfer of any personnel,
20 funds, books, documents, records, papers, files, equipment, or other
21 tangible property used or held in the exercise of the powers and the
22 performance of the duties and functions transferred, the director of
23 financial management shall make a determination as to the proper
24 allocation and certify the same to the state agencies concerned."

25 "NEW SECTION. Sec. 37. All employees of the department of
26 revenue engaged in performing the powers, functions, and duties
27 transferred are transferred to the jurisdiction of the liquor control
28 board. All employees classified under chapter 41.06 RCW, the state

1 civil service law, are assigned to the liquor control board to perform
2 their usual duties upon the same terms as formerly, without any loss of
3 rights, subject to any action that may be appropriate thereafter in
4 accordance with the laws and rules governing state civil service."

5 "NEW SECTION. Sec. 38. All rules and all pending business
6 before the department of revenue pertaining to the powers, functions,
7 and duties transferred shall be continued and acted upon by the liquor
8 control board. All existing contracts and obligations shall remain in
9 full force and shall be performed by the liquor control board."

10 "NEW SECTION. Sec. 39. The transfer of the powers, duties,
11 functions, and personnel of the department of revenue shall not affect
12 the validity of any act performed prior to the effective date of this
13 section."

14 "NEW SECTION. Sec. 40. If apportionments of budgeted funds are
15 required because of the transfers directed by sections 35 through 38 of
16 this act, the director of financial management shall certify the
17 apportionments to the agencies affected, the state auditor, and the
18 state treasurer. Each of these shall make the appropriate transfer and
19 adjustments in funds and appropriation accounts and equipment records
20 in accordance with the certification."

21 "NEW SECTION. Sec. 41. Nothing contained in sections 35 through
22 40 of this act may be construed to alter any existing collective
23 bargaining unit or the provisions of any existing collective bargaining
24 agreement until the agreement has expired or until the bargaining unit
25 has been modified by action of the personnel board as provided by law."

1 "NEW SECTION. **Sec. 42.** RCW 82.24.260 and 1987 c 80 s 3 & 1986
2 c 3 s 13 are each repealed."

3 "NEW SECTION. **Sec. 43.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected."

7 "NEW SECTION. **Sec. 44.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect July 1, 1991."

11 **SB 5560** - H COMM AMD
12 By Committee on Commerce & Labor

13
14 On page 1, line 1 of the title, after "statutes;" strike the
15 remainder of the title and insert "amending RCW 66.28.090, 66.44.010,
16 66.44.370, 82.24.010, 82.24.027, 82.24.030, 82.24.040, 82.24.050,
17 82.24.070, 82.24.090, 82.24.110, 82.24.120, 82.24.130, 82.24.135,
18 82.24.145, 82.24.180, 82.24.190, 82.24.210, 82.24.230, 82.24.250,
19 82.24.510, 82.24.520, 82.24.550, 82.24.560, 82.26.010, 82.26.050,
20 82.26.060, 82.26.080, 82.26.090, 82.26.110, and 82.26.120; adding a new
21 section to chapter 82.24 RCW; adding a new section to chapter 82.26
22 RCW; adding a new section to chapter 82.32 RCW; creating new sections;
23 repealing RCW 82.24.260; providing an effective date; and declaring an
24 emergency."