

## CHAPTER 248

[Engrossed House Bill No. 1509]

## EXCISE TAX ON NONRESIDENTS EMPLOYED INSIDE A COUNTY

AN ACT Relating to the taxation by a county of persons residing outside the state who are employed inside the county; adding a new chapter to Title 82 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that many people who are gainfully employed in Washington state do not live in the state and therefore pay little or no taxes from which many vital services are funded. Recognizing the importance of maintaining roads and other services, it is the purpose of this chapter to supplement the revenues of counties.

NEW SECTION. Sec. 2. The legislative authority of a county may impose an excise tax on persons residing outside the state who are employed inside the county for the privilege of using local governmental services in the county. The amount of the tax shall be based upon the actual benefits received by persons residing outside the state who are employed inside the county, including but not limited to police and fire protection and the construction and maintenance of streets. The county shall allocate to each city or town the amount of such taxes as are paid by nonresidents employed respectively in each such city or town.

NEW SECTION. Sec. 3. A county legislative authority imposing a tax under this chapter shall establish by ordinance all necessary and appropriate procedures for the administration and collection of the tax. The ordinance shall also provide that the due date for remittance of the tax collected shall be thirty days following the collection month.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act shall constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 5. This act shall take effect July 1, 1985.

Passed the House February 2, 1984.

Passed the Senate March 1, 1984.

Approved by the Governor March 27, 1984.

Filed in Office of Secretary of State March 27, 1984.

## CHAPTER 249

[Engrossed Substitute House Bill No. 1652]

## FIREWORKS

AN ACT Relating to fireworks; amending section 1, chapter 230, Laws of 1982 and RCW 70.77.126; amending section 2, chapter 230, Laws of 1982 and RCW 70.77.131; amending section 3, chapter 230, Laws of 1982 and RCW 70.77.136; amending section 5,

chapter 230, Laws of 1982 and RCW 70.77.146; amending section 13, chapter 228, Laws of 1961 as amended by section 8, chapter 230, Laws of 1982 and RCW 70.77.180; amending section 27, chapter 228, Laws of 1961 as amended by section 12, chapter 230, Laws of 1982 and RCW 70.77.250; amending section 28, chapter 228, Laws of 1961 as amended by section 14, chapter 230, Laws of 1982 and RCW 70.77.255; amending section 29, chapter 228, laws of 1961 as amended by section 15, chapter 230, Laws of 1982 and RCW 70.77.260; amending section 30, chapter 228, Laws of 1961 and RCW 70.77.265; amending section 31, chapter 228, Laws of 1961 and RCW 70.77.270; amending section 33, chapter 228, Laws of 1961 and RCW 70.77.280; amending section 34, chapter 228, Laws of 1961 as amended by section 16, chapter 230, Laws of 1982 and RCW 70.77.285; amending section 35, chapter 228, Laws of 1961 and RCW 70.77.290; amending section 36, chapter 228, Laws of 1961 as amended by section 17, chapter 230, Laws of 1982 and RCW 70.77.295; amending section 38, chapter 228, Laws of 1961 as amended by section 18, chapter 230, Laws of 1982 and RCW 70.77.305; amending section 19, chapter 230, Laws of 1982 and RCW 70.77.311; amending section 42, chapter 228, Laws of 1961 as amended by section 21, chapter 230, Laws of 1982 and RCW 70.77.325; amending section 48, chapter 228, Laws of 1961 as amended by section 26, chapter 230, Laws of 1982 and RCW 70.77.355; amending section 49, chapter 228, Laws of 1961 as amended by section 27, chapter 230, Laws of 1982 and RCW 70.77.360; amending section 50, chapter 228, Laws of 1961 as amended by section 28, chapter 230, Laws of 1982 and RCW 70.77.365; amending section 56, chapter 228, Laws of 1961 as amended by section 31, chapter 230, Laws of 1982 and RCW 70.77.395; amending section 60, chapter 228, Laws of 1961 as amended by section 33, chapter 230, Laws of 1982 and RCW 70.77.415; amending section 61, chapter 228, Laws of 1961 as amended by section 34, chapter 230, Laws of 1982 and RCW 70.77.420; amending section 62, chapter 228, Laws of 1961 as amended by section 35, chapter 230, Laws of 1982 and RCW 70.77.425; amending section 63, chapter 228, Laws of 1961 as amended by section 36, chapter 230, Laws of 1982 and RCW 70.77.430; amending section 65, chapter 228, Laws of 1961 and RCW 70.77.440; amending section 74, chapter 228, Laws of 1961 and RCW 70.77.485; amending section 79, chapter 228, Laws of 1961 as amended by section 40, chapter 230, Laws of 1982 and RCW 70.77.510; amending section 80, chapter 228, Laws of 1961 as amended by section 41, chapter 230, Laws of 1982 and RCW 70.77.515; amending section 81, chapter 228, Laws of 1961 and RCW 70.77.520; amending section 84, chapter 228, Laws of 1961 as amended by section 43, chapter 230, Laws of 1982 and RCW 70.77.535; amending section 85, chapter 228, Laws of 1961 and RCW 70.77.540; adding new sections to chapter 70.77 RCW; repealing section 13, chapter 230, Laws of 1982 and RCW 70.77.570; prescribing penalties; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 230, Laws of 1982 and RCW 70.77.126 are each amended to read as follows:

"Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and classified as common or special fireworks (~~((by the United States bureau of explosives or contained in the regulations of the United States department of transportation))~~).

Sec. 2. Section 2, chapter 230, Laws of 1982 and RCW 70.77.131 are each amended to read as follows:

"Special fireworks" (~~((includes))~~) means any fireworks ((designed primarily for exhibition display which produce visible or audible effects by combustion, deflagration, or detonation)) designed primarily for exhibition display by producing visible or audible effects. The term includes (1) fireworks commonly known as skyrockets, missile-type rockets, firecrackers, salutes, and chasers; and (2) fireworks not classified as common fireworks.

Sec. 3. Section 3, chapter 230, Laws of 1982 and RCW 70.77.136 are each amended to read as follows:

"Common fireworks" (~~((includes))~~) means any fireworks ((which are designed primarily for sale at retail to the public during prescribed dates and which produce visible or audible effects through combustion)) ~~designed primarily to produce visual or audible effects by combustion.~~

(1) The term includes:

(a) Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;

(b) Smoke devices;

(c) Fireworks commonly known as helicopters, aerials, spinners, roman candles, mines, and shells;

(d) Class C explosives classified on January 1, 1984, as common fireworks by the United States department of transportation.

(2) The term does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets, and missile-type rockets.

Sec. 4. Section 5, chapter 230, Laws of 1982 and RCW 70.77.146 are each amended to read as follows:

~~((<sup>"Pyrotechnics"</sup>))~~ "Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as a necessary part of a motion picture, radio or television production, theatrical, or opera.

Sec. 5. Section 13, chapter 228, Laws of 1961 as amended by section 8, chapter 230, Laws of 1982 and RCW 70.77.180 are each amended to read as follows:

"Permit" means the official permission granted by ~~((the))~~ a local public agency for the purpose of establishing and maintaining a place within the jurisdiction of the local agency where fireworks are manufactured, constructed, produced, packaged, stored, sold, exchanged, discharged or used.

NEW SECTION. Sec. 6. There is added to chapter 70.77 RCW a new section to read as follows:

"Local fire official" means the chief of a local fire department or fire protection district, a chief fire protection officer or such other person as may be designated by the governing body of a city, county, or district to act as a local fire official under this chapter.

Sec. 7. Section 27, chapter 228, Laws of 1961 as amended by section 12, chapter 230, Laws of 1982 and RCW 70.77.250 are each amended to read as follows:

(1) The state fire marshal shall enforce and administer this chapter ~~((and shall have the following powers and duties:))~~.

~~((1) He))~~ (2) The state fire marshal shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter(;;).

~~((2) He))~~ (3) The state fire marshal may prescribe such rules ((and regulations)) relating to fireworks as may be necessary for the protection of life and property((, and shall adopt reasonable rules and regulations not inconsistent with the provisions of this chapter, for the granting of licenses for, and the presentation of, public displays of fireworks;)) and for the implementation of this chapter.

(4) The state fire marshal shall prescribe such rules as may be necessary to ensure state-wide minimum standards for the enforcement of this chapter. Counties, cities, and towns shall comply with such state rules. Any local rules adopted by local authorities that are more restrictive than state law as to the types of fireworks that may be sold shall have an effective date no sooner than one year after their adoption.

~~((3) He is vested with))~~ (5) The state fire marshal may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency or local government.

NEW SECTION, Sec. 8. There is added to chapter 70.77 RCW a new section to read as follows:

(1) The state fire marshal shall adopt by rule a list of the fireworks that may be sold to the public in this state pursuant to this chapter. The state fire marshal shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The state fire marshal shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current.

NEW SECTION, Sec. 9. There is added to chapter 70.77 RCW a new section to read as follows:

Retailers required to be licensed under this chapter shall post prominently at each retail outlet a list of the fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the state fire marshal. The fire marshal shall make available the list.

Sec. 10. Section 28, chapter 228, Laws of 1961 as amended by section 14, chapter 230, Laws of 1982 and RCW 70.77.255 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, no person, without ~~((securing a))~~ an appropriate state license ~~((, shall do any of the following))~~ may:

~~((1))~~ (a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

~~((2))~~ ~~Discharge special fireworks at any place;~~

~~((3))~~ (b) Make a public display of fireworks; or

~~((4))~~ (c) Transport fireworks, except as a public carrier delivering to a licensee.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section, no person may discharge special fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of common fireworks lawfully purchased at retail.

Sec. 11. Section 29, chapter 228, laws of 1961 as amended by section 15, chapter 230, Laws of 1982 and RCW 70.77.260 are each amended to read as follows:

(1) Any ~~((adult))~~ person ~~((or other group))~~ desiring to do any act mentioned in RCW 70.77.255(1) (a) or (c) shall ~~((also make written application))~~ apply in writing to a local fire official for a permit ~~((to the chief of the fire department or the chief fire prevention officer of the city or county, or to such other person as may be designated by the governing body of the city or county)).~~

~~((Applications for permits for))~~ (2) Any person desiring to put on a public display of fireworks under RCW 70.77.255(1)(b) shall ~~((be made in writing))~~ apply in writing to a local fire official for a permit. Application shall be made at least ten days in advance of the proposed display.

Sec. 12. Section 30, chapter 228, Laws of 1961 and RCW 70.77.265 are each amended to read as follows:

~~((It shall be the duty of the officer to whom))~~ The local fire official receiving an application for a permit ~~((was made to make an investigation))~~ under RCW 70.77.260(1) shall investigate the application and submit a report of ~~((his))~~ findings and ~~((his))~~ a recommendation for or against the issuance of the permit, together with ~~((his))~~ reasons ~~((therefor))~~, to the governing body of the city ~~((or))~~, county, or fire protection district.

Sec. 13. Section 31, chapter 228, Laws of 1961 and RCW 70.77.270 are each amended to read as follows:

The governing body ~~((shall have power in its discretion to))~~ of a city, county, or fire protection district may grant or deny ~~((the))~~ an application ~~((, subject to such reasonable conditions, if any, as it shall prescribe))~~

for a permit under RCW 70.77.260(1). The governing body may place reasonable conditions on any permit it issues.

Sec. 14. Section 33, chapter 228, Laws of 1961 and RCW 70.77.280 are each amended to read as follows:

((It shall be the duty of the officer to whom)) The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks ((is made to make an investigation as to)) shall investigate whether ((such a)) the character and location of the display as proposed ((will be of such a character and will be so located that it may)) would be hazardous to property or dangerous to any person((, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as he may prescribe)). Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city, county, or fire protection district. The governing body may grant or deny the application and may place reasonable conditions on any permit it issues.

Sec. 15. Section 34, chapter 228, Laws of 1961 as amended by section 16, chapter 230, Laws of 1982 and RCW 70.77.285 are each amended to read as follows:

Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall ((at the time of application filed with the officer to whom the application is made,)) include with the application evidence of a bond issued by an authorized surety company ((to be approved by such officer,)). The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property ((which shall or may result)) resulting from or ((be)) caused by such public display of fireworks, or any negligence on the part of the applicant((;)) or ((his or)) its agents, servants, employees, or subcontractors in the presentation ((thereof, or)) of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate public liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to respond in damages ((in at least such amount, said policies to be similarly approved)). The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section.

Sec. 16. Section 35, chapter 228, Laws of 1961 and RCW 70.77.290 are each amended to read as follows:

If a permit under RCW 70.77.260(2) for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. ((No such)) The permit granted ((shall be)) is not transferable.

Sec. 17. Section 36, chapter 228, Laws of 1961 as amended by section 17, chapter 230, Laws of 1982 and RCW 70.77.295 are each amended to read as follows:

In the case of an application for a permit under RCW 70.77.260(2) for the public display of fireworks, the amount of ~~((such a))~~ the surety bond or certificate of insurance required under RCW 70.77.285 shall be not less than fifty thousand dollars and one million dollars for bodily injury liability for each person and event, respectively, and not less than twenty-five thousand dollars for property damage liability for each event.

Sec. 18. Section 38, chapter 228, Laws of 1961 as amended by section 18, chapter 230, Laws of 1982 and RCW 70.77.305 are each amended to read as follows:

The state fire marshal has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the state fire marshal.

Sec. 19. Section 19, chapter 230, Laws of 1982 and RCW 70.77.311 are each amended to read as follows:

(1) No license is required for the ~~((sale of common fireworks to religious organizations for ceremonial uses or to private organizations or persons for specific uses, when approved by the local fire official, or for the sale and use))~~ purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior ~~((and if))~~ or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices(;;);

(c) It is of no greater quantity than necessary to control the described problem(;;); and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use common fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official.

Sec. 20. Section 42, chapter 228, Laws of 1961 as amended by section 21, chapter 230, Laws of 1982 and RCW 70.77.325 are each amended to read as follows:

(1) Application for a license shall be made annually by every person holding an existing license ((and)) who wishes to continue the activity requiring the license. The application shall be accompanied by the annual license fee as prescribed in ((this chapter)) RCW 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application by June 10 of the current year. The state fire marshal shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The state fire marshal shall grant or deny the license within ninety days of receipt of the application.

Sec. 21. Section 48, chapter 228, Laws of 1961 as amended by section 26, chapter 230, Laws of 1982 and RCW 70.77.355 are each amended to read as follows:

(1) ~~((Notwithstanding any of the other provisions of this chapter relating to public liability insurance and bonds, any adult individual, concern, firm, corporation, or copartnership))~~ Any adult person may secure a general license from the state fire marshal for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city ((or)), county, or fire protection district, except that in lieu of filing the bond((s)) or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285 ((and 70.77.295, a surety bond similarly conditioned or a certificate evidencing public liability insurance in a like amount)), the same bond or certificate shall be filed with the state fire marshal. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the state fire marshal; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2) ~~The state fire marshal ((shall have the authority to))~~ may issue such general licenses((, subject to such reasonable rules and regulations which he may adopt, not inconsistent with the provisions of this chapter. A certificate evidencing such general license, when so obtained, shall be filed with the legislative body or officer granting a permit for the public display



of fireworks prior to the issuance thereof)). The holder of a general license shall file a certificate from the state fire marshal evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260.

Sec. 22. Section 49, chapter 228, Laws of 1961 as amended by section 27, chapter 230, Laws of 1982 and RCW 70.77.360 are each amended to read as follows:

If the state fire marshal finds that an application for any license under this chapter contains a material misrepresentation or that the granting of ((a)) any license would be contrary to the public safety or welfare, ((he)) the state fire marshal may deny the application for ((a)) the license.

Sec. 23. Section 50, chapter 228, Laws of 1961 as amended by section 28, chapter 230, Laws of 1982 and RCW 70.77.365 are each amended to read as follows:

A written report ((of)) by the state fire marshal((, any of his deputies or salaried assistants, or the chief of any city or county fire department or fire protection district)) or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license ((shall)) constitutes grounds for the denial by the state fire marshal of any application for a license.

Sec. 24. Section 56, chapter 228, Laws of 1961 as amended by section 31, chapter 230, Laws of 1982 and RCW 70.77.395 are each amended to read as follows:

Except as provided in RCW 70.77.311, no common fireworks shall be sold or discharged within this state except from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year. No common fireworks may be sold or discharged between the hours of eleven o'clock p.m. and nine o'clock a.m.

Sec. 25. Section 60, chapter 228, Laws of 1961 as amended by section 33, chapter 230, Laws of 1982 and RCW 70.77.415 are each amended to read as follows:

Every public display of fireworks shall be handled or supervised by a ((licensed)) pyrotechnic operator licensed by the state fire marshal under RCW 70.77.255.

Sec. 26. Section 61, chapter 228, Laws of 1961 as amended by section 34, chapter 230, Laws of 1982 and RCW 70.77.420 are each amended to read as follows:

It ((shall be)) is unlawful for any person to store fireworks of any class without ((first having made a written application for and received)) a permit for such storage ((to the chief of the fire department or to the chief fire prevention officer of the city or county)) from the local fire official in the jurisdiction in which the storage is to be made. A person proposing to store

fireworks shall apply in writing to a local fire official at least ten days prior to the date of the proposed storage. ~~((It shall be the duty of the officer to whom))~~ The official receiving the application for a storage permit ~~((is made to make an investigation as to))~~ shall investigate whether ~~((such))~~ the character and location of the storage as proposed ~~((will be of such a nature and character and will be so located as to))~~ would constitute a hazard to property or be dangerous to any person~~((, and he shall in the exercise of reasonable discretion))~~. Based on the investigation, the official may grant or deny the application~~((, subject to such reasonable conditions, if any, as he may prescribe))~~. The official may place reasonable conditions on any permit granted.

Sec. 27. Section 62, chapter 228, Laws of 1961 as amended by section 35, chapter 230, Laws of 1982 and RCW 70.77.425 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person to store unsold stocks of fireworks remaining unsold after the lawful period of sale as provided in ~~((his))~~ the person's permit except in such places of storage as the local ~~((officer))~~ fire official issuing the permit ~~((shall))~~ approves. Unsold stocks of common fireworks remaining after the authorized retail sales period from twelve o'clock noon on June 28th to twelve o'clock noon on July 6th shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by ~~((the chief of any city or county fire department or fire protection district))~~ a local fire official.

Sec. 28. Section 63, chapter 228, Laws of 1961 as amended by section 36, chapter 230, Laws of 1982 and RCW 70.77.430 are each amended to read as follows:

Notwithstanding RCW 70.77.255, following the revocation or expiration of ~~((his))~~ a license, ~~((any person))~~ a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the state fire marshal ~~((and in such a manner as he shall by rule provide and))~~. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks.

Sec. 29. Section 65, chapter 228, Laws of 1961 and RCW 70.77.440 are each amended to read as follows:

(1) Any person whose fireworks are seized under the provisions of RCW 70.77.435 may within ten days after such seizure petition the state fire marshal to return the fireworks seized upon the ground that such fireworks were illegally or erroneously seized. Any petition filed hereunder shall be considered by the state fire marshal within fifteen days after filing and an oral hearing granted the petitioner, if requested. Notice of the decision of the state fire marshal shall be served upon the petitioner. The state fire marshal may order the fireworks seized under this chapter disposed of or

returned to the petitioner if illegally or erroneously seized. The determination of the state fire marshal is final unless within sixty days an action is commenced in a court of competent jurisdiction in the state of Washington for the recovery of the fireworks seized by the state fire marshal.

(2) If the fireworks are not returned to the petitioner or destroyed pursuant to RCW 70.77.435, the state fire marshal may sell confiscated common fireworks and special fireworks that are legal for use and possession under this chapter to wholesalers licensed by the state fire marshal. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section shall be deposited in the general fund. Fireworks that are not legal for use and possession in this state shall be destroyed by the state fire marshal.

Sec. 30. Section 74, chapter 228, Laws of 1961 and RCW 70.77.485 are each amended to read as follows:

~~((The unlawful possession of))~~ It is unlawful to possess any class or kind of fireworks in violation of ((the provisions of)) this chapter ((shall be a misdemeanor)). A violation of this section is:

(1) A misdemeanor if involving less than one pound of fireworks, exclusive of external packaging; or

(2) A gross misdemeanor if involving one pound or more of fireworks, exclusive of external packaging.

For the purposes of this section, "external packaging" means any materials that are not an integral part of the operative unit of fireworks.

Sec. 31. Section 79, chapter 228, Laws of 1961 as amended by section 40, chapter 230, Laws of 1982 and RCW 70.77.510 are each amended to read as follows:

~~((No person shall))~~ It is unlawful for any person knowingly to sell ((or)), transfer, or agree to sell or transfer any special fireworks to any person who is not a fireworks licensee as provided for by this chapter. A violation of this section is a gross misdemeanor.

Sec. 32. Section 80, chapter 228, Laws of 1961 as amended by section 41, chapter 230, Laws of 1982 and RCW 70.77.515 are each amended to read as follows:

~~((No person shall))~~ It is unlawful for any person to sell or transfer any common fireworks to a consumer or user ((thereof)) other than at a fixed place of business of a retailer for which a license and permit have been issued. A violation of this section is a gross misdemeanor.

Sec. 33. Section 81, chapter 228, Laws of 1961 and RCW 70.77.520 are each amended to read as follows:

~~((No person shall))~~ It is unlawful for any person to allow any rubbish to accumulate in any premises ((when any)) in which fireworks are stored

or sold or permit a fire nuisance to exist in such a premises. A violation of this section is a misdemeanor.

NEW SECTION. Sec. 34. There is added to chapter 70.77 RCW a new section to read as follows:

It is unlawful for any person, except in the course of continuous interstate transportation through any state, to transport fireworks from this state into any other state, or deliver them for transportation into any other state, or attempt so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such other state specifically prohibiting or regulating the use of fireworks. A violation of this section is a gross misdemeanor.

This section does not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a state for the use of federal agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective states shall be applied.

As used in this section, the term "state" includes the several states, territories, and possessions of the United States, and the District of Columbia.

Sec. 35. Section 84, chapter 228, Laws of 1961 as amended by section 43, chapter 230, Laws of 1982 and RCW 70.77.535 are each amended to read as follows:

This chapter does not prohibit the assembling, compounding, use, and display of ~~((pyrotechnics))~~ special effects of whatever nature by any person engaged in the production of motion pictures, radio or television productions, theatricals, or operas when such use and display is a necessary part of the production and such person possesses a valid permit from the local fire ~~((authority))~~ official.

Sec. 36. Section 85, chapter 228, Laws of 1961 and RCW 70.77.540 are each amended to read as follows:

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter or any rules ~~((or regulations))~~ issued thereunder is guilty of a misdemeanor ~~((, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not exceeding one year, or by both such fine and imprisonment))~~.

NEW SECTION. Sec. 37. There is added to chapter 70.77 RCW a new section to read as follows:

It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury

to another person or damage to the property of another. A violation of this section is a gross misdemeanor.

***\*NEW SECTION. Sec. 38. There is added to chapter 70.77 RCW a new section to read as follows:***

***In an action based on fault seeking to recover damages for injury or death to person or harm to property resulting from the sale of fireworks in violation of this chapter, no contributory fault is chargeable to the claimant to diminish an award of compensatory damages for any such injury, death or harm.***

\*Sec. 38. was vetoed, see message at end of chapter.

***\*NEW SECTION. Sec. 39. There is added to chapter 70.77 RCW a new section to read as follows:***

***It is unlawful for any person, firm, partnership or corporation to print or broadcast any advertisement for the sale of fireworks in violation of this chapter.***

\*Sec. 39. was vetoed, see message at end of chapter.

***NEW SECTION. Sec. 40. Section 13, chapter 230, Laws of 1982 and RCW 70.77.570 are each repealed.***

***NEW SECTION. Sec. 41. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.***

***\*NEW SECTION. Sec. 42. Sections 2, 3, and 40 of this act shall take effect on January 1, 1985. All other sections of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.***

\*Sec. 42. was vetoed, see message at end of chapter.

Passed the House March 5, 1984.

Passed the Senate February 26, 1984.

Approved by the Governor March 28, 1984, with the exception of sections 38, 39 and 42, which were vetoed.

Filed in Office of Secretary of State March 28, 1984.

Note: Governor's explanation of partial veto is as follows:

I am returning herewith, without my approval as to three sections engrossed Substitute House Bill No. 1652, entitled:

"AN ACT Relating to fireworks."

This bill embodies much needed language which will take the state a substantial way back down the road to a "safe and sane" policy with respect to Fourth of July fireworks.

Many have pointed out technical and conceptual flaws in the wording of this bill but with three exceptions, none of these arguments are convincing. The evidence is incontrovertible that the sale of dangerous fireworks over the last two years has resulted in destruction of property, including home fires, created a significant number

of minor and sometimes major injuries, and seriously disrupted the peace and quiet of our State's citizenry over a substantial portion of the summer. All of this goes far beyond justifiable displays of patriotism on the anniversary of this nation's independence.

The concerns of the state's citizens and the threat posed by fireworks outweigh arguments in favor of delaying the effective date of this legislation. Therefore, I have vetoed Section 42 which contains the one year delay. This legislation will be come effective on June 7, 1984.

This bill provides for an option in counties, cities and towns to adopt more restrictive rules with respect to the types of fireworks that may be sold. Moreover, neither the state of Washington nor any local law enforcement agency has complete authority over sales by Indian tribes, some of which sales may be illegal under this legislation. Given this overlap of jurisdictional authority and given possible discrepancies in proscribed conduct, I am also vetoing Sections 38, and 39 of the bill.

Section 38 adopts a standard of strict liability with respect to damages awardable in any action for injury to person or property resulting from the sale of fireworks in violation of the Chapter. In short, the contributory fault of the claimant with respect to both purchasing illegal fireworks or improperly using those fireworks would not be chargeable to the claimant to diminish an award of compensatory damages. While I fully endorse the intent of this section to create incentives against the sale of illegal fireworks, I believe it will prove unfair and unworkable in view of the approach of the statute with regard to local option and with regard to problems presented by the sale of fireworks by Indian tribes. I would support a more specialized approach to strict liability that referenced the sections of the statute that specifically prohibit types of fireworks.

Section 39 of this bill purports to prohibit the printing or broadcasting of any advertisement for the sale of fireworks "in violation of this Chapter." As worded, this section is vague. In application, I believe it will not only be vague but overly broad and thus violative of Constitutional protections for freedom of speech and expression.

With the exception of Sections 38, 39 and 42, the Engrossed Substitute House Bill 1652 is approved.

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## CHAPTER 250

### [Engrossed Substitute House Bill No. 255] WATERCRAFT TAX AND REGISTRATION

AN ACT Relating to watercraft; amending section 43, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.49.020; amending section 49, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.49.070; amending section 16, chapter 7, Laws of 1983 as amended by section 44, chapter 3, Laws of 1983 2nd ex. sess. and RCW 88.02.030; amending section 84.56.260, chapter 15, Laws of 1961 and RCW 84.56.260; adding a new section to chapter 84.08 RCW; creating a new section; repealing section 53, chapter 3, Laws of 1983 2nd ex. sess. (uncodified); and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 43, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.49.020 are each amended to read as follows:

The following are exempt from the tax imposed under this chapter:

- (1) Vessels exempt from the registration requirements of chapter 88.02 RCW;
- (2) Vessels used exclusively for commercial fishing purposes;
- (3) Vessels under sixteen feet in overall length;