
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2425.1/01

ATTY/TYPIST: SCG:rmh

BRIEF DESCRIPTION:

2 **ESSB 5372** - H COMM AMD **ADOPTED 4/5/01**
3 By Committee on Finance

4

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

7 NEW SECTION. **Sec. 1.** The legislature intends to further the
8 government-to-government relationship between the state of Washington
9 and Indians in the state of Washington by authorizing the governor to
10 enter into contracts concerning the sale of cigarettes. The
11 legislature finds that these cigarette tax contracts will provide a
12 means to promote economic development, provide needed revenues for
13 tribal governments and Indian persons, and enhance enforcement of the
14 state's cigarette tax law, ultimately saving the state money and
15 reducing conflict. In addition, it is the intent of the legislature
16 that the negotiations and the ensuing contracts shall have no impact on
17 the state's share of the proceeds under the master settlement agreement
18 entered into on November 23, 1998, by the state. This act does not
19 constitute a grant of taxing authority to any Indian tribe nor does it
20 provide precedent for the taxation of non-Indians on fee land.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06 RCW
22 to read as follows:

23 (1) The governor may enter into cigarette tax contracts concerning
24 the sale of cigarettes. All cigarette tax contracts shall meet the
25 requirements for cigarette tax contracts under this section. Except
26 for cigarette tax contracts under section 3 of this act, the rates,
27 revenue sharing, and exemption terms of a cigarette tax contract are
28 not effective unless authorized in a bill enacted by the legislature.

29 (2) Cigarette tax contracts shall be in regard to retail sales in
30 which Indian retailers make delivery and physical transfer of
31 possession of the cigarettes from the seller to the buyer within Indian
32 Country, and are not in regard to transactions by non-Indian retailers.
33 In addition, contracts shall provide that retailers shall not sell or
34 give, or permit to be sold or given, cigarettes to any person under the
35 age of eighteen years.

1 (3) A cigarette tax contract with a tribe shall provide for a
2 tribal cigarette tax in lieu of all state cigarette taxes and state and
3 local sales and use taxes on sales of cigarettes in Indian Country by
4 Indian retailers. The tribe may allow an exemption for sales to tribal
5 members.

6 (4) Cigarette tax contracts shall provide that all cigarettes
7 possessed or sold by a retailer shall bear a cigarette stamp obtained
8 by wholesalers from a bank or other suitable stamp vendor and applied
9 to the cigarettes. The procedures to be used by the tribe in obtaining
10 tax stamps must include a means to assure that the tribal tax will be
11 paid by the wholesaler obtaining such cigarettes. Tribal stamps must
12 have serial numbers or some other discrete identification so that each
13 stamp can be traced to its source.

14 (5) Cigarette tax contracts shall provide that retailers shall
15 purchase cigarettes only from:

16 (a) Wholesalers or manufacturers licensed to do business in the
17 state of Washington;

18 (b) Out-of-state wholesalers or manufacturers who, although not
19 licensed to do business in the state of Washington, agree to comply
20 with the terms of the cigarette tax contract, are certified to the
21 state as having so agreed, and who do in fact so comply. However, the
22 state may in its sole discretion exercise its administrative and
23 enforcement powers over such wholesalers or manufacturers to the extent
24 permitted by law;

25 (c) A tribal wholesaler that purchases only from a wholesaler or
26 manufacturer described in (a), (b), or (d) of this subsection; and

27 (d) A tribal manufacturer.

28 (6) Cigarette tax contracts shall be for renewable periods of no
29 more than eight years. A renewal may not include a renewal of the
30 phase-in period.

31 (7) Cigarette tax contracts shall include provisions for
32 compliance, such as transport and notice requirements, inspection
33 procedures, stamping requirements, recordkeeping, and audit
34 requirements.

35 (8) Tax revenue retained by a tribe must be used for essential
36 government services. Use of tax revenue for subsidization of cigarette
37 and food retailers is prohibited.

38 (9) The cigarette tax contract may include provisions to resolve
39 disputes using a nonjudicial process, such as mediation.

1 (10) The governor may delegate the power to negotiate cigarette tax
2 contracts to the department of revenue. The department of revenue
3 shall consult with the liquor control board during the negotiations.

4 (11) Information received by the state or open to state review
5 under the terms of a contract is subject to the provisions of RCW
6 82.32.330.

7 (12) It is the intent of the legislature that the liquor control
8 board and the department of revenue continue the division of duties and
9 shared authority under chapter 82.24 RCW and therefore the liquor
10 control board is responsible for enforcement activities that come under
11 the terms of chapter 82.24 RCW.

12 (13) Each cigarette tax contract shall include a procedure for
13 notifying the other party that a violation has occurred, a procedure
14 for establishing whether a violation has in fact occurred, an
15 opportunity to correct such violation, and a provision providing for
16 termination of the contract should the violation fail to be resolved
17 through this process, such termination subject to mediation should the
18 terms of the contract so allow. A contract shall provide for
19 termination of the contract if resolution of a dispute does not occur
20 within twenty-four months from the time notification of a violation has
21 occurred. Intervening violations do not extend this time period. In
22 addition, the contract shall include provisions delineating the
23 respective roles and responsibilities of the tribe, the department of
24 revenue, and the liquor control board.

25 (14) For purposes of this section and sections 3 through 6 of this
26 act:

27 (a) "Essential government services" means services such as tribal
28 administration, public facilities, fire, police, public health,
29 education, job services, sewer, water, environmental and land use,
30 transportation, utility services, and economic development;

31 (b) "Indian retailer" or "retailer" means (i) a retailer wholly
32 owned and operated by an Indian tribe, (ii) a business wholly owned and
33 operated by a tribal member and licensed by the tribe, or (iii) a
34 business owned and operated by the Indian person or persons in whose
35 name the land is held in trust; and

36 (c) "Indian tribe" or "tribe" means a federally recognized Indian
37 tribe located within the geographical boundaries of the state of
38 Washington.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.06 RCW
2 to read as follows:

3 (1) The governor is authorized to enter into cigarette tax
4 contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip
5 Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the
6 Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the
7 Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian
8 Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis
9 Confederated Tribes, and the Upper Skagit Tribe. Each contract adopted
10 under this section shall provide that the tribal cigarette tax rate be
11 one hundred percent of the state cigarette and state and local sales
12 and use taxes within three years of enacting the tribal tax and shall
13 be set no lower than eighty percent of the state cigarette and state
14 and local sales and use taxes during the three-year phase-in period.
15 The three-year phase-in period shall be shortened by three months each
16 quarter the number of cartons of nontribal manufactured cigarettes is
17 at least ten percent or more than the quarterly average number of
18 cartons of nontribal manufactured cigarettes from the six-month period
19 preceding the imposition of the tribal tax under the contract. Sales
20 at a retailer operation not in existence as of the date a tribal tax
21 under this section is imposed are subject to the full rate of the
22 tribal tax under the contract. The tribal cigarette tax is in lieu of
23 the state cigarette and state and local sales and use taxes, as
24 provided in section 2(3) of this act.

25 (2) A cigarette tax contract under this section is subject to
26 section 2 of this act.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW
28 to read as follows:

29 The tax levied by RCW 82.08.020 does not apply to sales of
30 cigarettes by an Indian retailer during the effective period of a
31 cigarette tax contract subject to section 2 of this act.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW
33 to read as follows:

34 The provisions of this chapter shall not apply in respect to the
35 use of cigarettes sold by an Indian retailer during the effective
36 period of a cigarette tax contract subject to section 2 of this act.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW
2 to read as follows:

3 (1) The taxes imposed by this chapter do not apply to the sale,
4 use, consumption, handling, possession, or distribution of cigarettes
5 by an Indian retailer during the effective period of a cigarette tax
6 contract subject to section 2 of this act.

7 (2) Effective July 1, 2002, wholesalers and retailers subject to
8 the provisions of this chapter shall be allowed compensation for their
9 services in affixing the stamps required under this chapter a sum
10 computed at the rate of six dollars per one thousand stamps purchased
11 or affixed by them.

12 NEW SECTION. **Sec. 7.** RCW 82.24.070 (Compensation of dealers), as
13 now or hereafter amended, and 1987 c 496 s 5, 1987 c 80 s 2, 1971 ex.s.
14 c 299 s 14, 1965 ex.s. c 173 s 24, 1961 ex.s. c 24 s 4, & 1961 c 15 s
15 82.24.070 are each repealed.

16 **Sec. 8.** RCW 82.24.510 and 1986 c 321 s 5 are each amended to read
17 as follows:

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

19 (a) A wholesaler's license.

20 (b) A retailer's license.

21 (2) Application for the licenses shall be made through the master
22 license system under chapter 19.02 RCW. The department of revenue
23 shall adopt rules regarding the regulation of the licenses. The
24 department of revenue may refrain from the issuance of any license
25 under this chapter if the department has reasonable cause to believe
26 that the applicant has wilfully withheld information requested for the
27 purpose of determining the eligibility of the applicant to receive a
28 license, or if the department has reasonable cause to believe that
29 information submitted in the application is false or misleading or is
30 not made in good faith. In addition, for the purpose of reviewing an
31 application for a wholesaler's license and for considering the denial,
32 suspension, or revocation of any such license, the department may
33 consider criminal convictions of the applicant related to the selling
34 of cigarettes within the previous five years in any state, tribal, or
35 federal jurisdiction in the United States, its territories, or
36 possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW
37 shall not apply to such cases. The department may, in its discretion,

1 grant or refuse the wholesaler's license, subject to the provisions of
2 RCW 82.24.550.

3 (3) No person may qualify for a wholesaler's license under this
4 section without first undergoing a criminal background check. The
5 background check shall be performed by the liquor control board and
6 must disclose any criminal convictions related to the selling of
7 cigarettes within the previous five years in any state, tribal, or
8 federal jurisdiction in the United States, its territories, or
9 possessions. A person who possesses a valid license on the effective
10 date of this section is subject to this subsection and subsection (2)
11 of this section beginning on the date of the person's master license
12 expiration, and thereafter. If the applicant or licensee also has a
13 license issued under chapter 66.24 RCW, the background check done under
14 the authority of chapter 66.24 RCW satisfies the requirements of this
15 section.

16 (4) Each such license shall expire on the master license expiration
17 date, and each such license shall be continued annually if the licensee
18 has paid the required fee and complied with all the provisions of this
19 chapter and the rules of the department of revenue made pursuant
20 thereto.

21 NEW SECTION. Sec. 9. Section 7 of this act takes effect July 1,
22 2002."

23 Correct the title.

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