
ENGROSSED SUBSTITUTE SENATE BILL 5372

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Swecker, Honeyford, Gardner, T. Sheldon and Oke; by request of Department of Revenue)

READ FIRST TIME 02/22/01.

1 AN ACT Relating to cooperative agreements concerning the taxation
2 of cigarettes sold on Indian lands; adding new sections to chapter
3 43.06 RCW; adding a new section to chapter 82.08 RCW; adding a new
4 section to chapter 82.12 RCW; adding a new section to chapter 82.24
5 RCW; creating a new section; repealing RCW 82.24.070; and providing an
6 effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature intends to further the
9 government-to-government relationship between the state of Washington
10 and Indians in the state of Washington by authorizing the governor to
11 enter into cooperative agreements concerning the sale of cigarettes.
12 The legislature finds that these agreements will provide a means to
13 promote economic development, provide needed revenues for tribal
14 governments and Indian persons, and enhance enforcement of the state's
15 cigarette tax law, ultimately saving the state money and reducing
16 conflict.

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

1 (1) The governor may enter into cooperative agreements concerning
2 the sale of cigarettes. All cooperative agreements shall meet the
3 requirements for cooperative agreements under this section. Except for
4 cooperative agreements under section 3 of this act, the rates, revenue
5 sharing, and exemption terms of a cooperative agreement are not
6 effective unless authorized in a bill enacted by the legislature.

7 (2) Cooperative agreements shall be in regard to retail sales in
8 which Indian retailers make delivery and physical transfer of
9 possession of the cigarettes from the seller to the buyer within the
10 Indian lands. In addition, cooperative agreements shall provide that
11 retailers shall not sell or give, or permit to be sold or given,
12 cigarettes to any person under the age of eighteen years.

13 (3) A cooperative agreement with a tribe shall provide for a tribal
14 cigarette tax in lieu of all state cigarette taxes and state and local
15 sales and use taxes on sales of cigarettes on Indian lands by Indian
16 retailers. The tribe may allow an exemption for sales to tribal
17 members.

18 (4) Cooperative agreements shall provide that all cigarettes
19 possessed or sold by a retailer shall bear a cigarette stamp obtained
20 by wholesalers from a bank or other suitable stamp vendor and applied
21 to the cigarettes.

22 (5) Cooperative agreements shall provide that retailers shall
23 purchase cigarettes only from:

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

26 (b) Out-of-state wholesalers or manufacturers who, although not
27 licensed to do business in the state of Washington, agree to comply
28 with the terms of the cooperative agreement, are certified to the state
29 as having so agreed, and who do in fact so comply. However, the state
30 may in its sole discretion exercise its administrative and enforcement
31 powers over such wholesalers or manufacturers to the extent permitted
32 by law;

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

35 (d) A tribal manufacturer.

36 (6) Cooperative agreements shall be for renewable periods of no
37 more than eight years. A renewal may not include a renewal of the
38 phase-in period.

39 (7) Cooperative agreements shall include provisions for compliance.

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

4 (9) Cooperative agreements may provide for the submission of
5 disputes regarding the interpretation and administration of their
6 provisions for judicial resolution, and, if such submissions are
7 agreed, shall include provision for a limited waiver of sovereign
8 immunity and consent by the state for the resolution conditioned upon
9 a similar limited waiver of sovereign immunity by the other parties to
10 the agreement.

11 (10) The governor may delegate the power to negotiate cooperative
12 agreements to the department of revenue.

13 (11) Information received by the state or open to state review
14 under the terms of an agreement is subject to the provisions of RCW
15 82.32.330.

16 (12) For purposes of this section and sections 3 through 6 of this
17 act:

18 (a) "Essential government services" means services such as tribal
19 administration, public facilities, fire, police, public health,
20 education, job services, sewer, water, environmental and land use,
21 transportation, utility services, and economic development;

22 (b) "Indian lands" means all land held in trust for a tribe or
23 Indian person by the United States;

24 (c) "Indian retailer" or "retailer" means (i) a retailer wholly
25 owned and operated by an Indian tribe, (ii) a business wholly owned and
26 operated by a tribal member and licensed by the tribe, or (iii) a
27 business owned and operated by the Indian person or persons in whose
28 name the land is held in trust; and

29 (d) "Indian tribe" or "tribe" means a federally recognized Indian
30 tribe located within the geographical boundaries of the state of
31 Washington.

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

34 (1) The governor is authorized to enter into cooperative agreements
35 with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the
36 Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam
37 Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe,
38 the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Nooksack

1 Indian Tribe, and the Lummi Nation. Each agreement adopted under this
2 section shall provide that the tribal cigarette tax rate be one hundred
3 percent of the state cigarette and state and local sales and use taxes
4 within three years of enacting the tribal tax and shall be set no lower
5 than eighty percent of the state cigarette and state and local sales
6 and use taxes during the three-year phase-in period. The three-year
7 phase-in period shall be shortened by three months each quarter the
8 number of cartons of nontribal manufactured cigarettes is at least
9 ten percent or more than the quarterly average number of cartons of
10 nontribal manufactured cigarettes from the six-month period preceding
11 the imposition of the tribal tax under the agreement. Sales at a
12 retailer operation not in existence as of the date a tribal tax under
13 this section is imposed are subject to the full rate of the tribal tax
14 under the agreement. The tribal cigarette tax is in lieu of the state
15 cigarette and state and local sales and use taxes, as provided in
16 section 2(3) of this act.

17 (2) A cooperative agreement under this section is subject to
18 section 2 of this act.

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

21 The tax levied by RCW 82.08.020 does not apply to sales of
22 cigarettes by an Indian retailer during the effective period of a
23 cooperative agreement subject to section 2 of this act.

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

26 The provisions of this chapter shall not apply in respect to the
27 use of cigarettes sold by an Indian retailer during the effective
28 period of a cooperative agreement subject to section 2 of this act.

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

31 (1) This chapter does not apply to the sale, use, consumption,
32 handling, possession, or distribution of cigarettes by an Indian
33 retailer during the effective period of a cooperative agreement subject
34 to section 2 of this act.

35 (2) Effective July 1, 2002, wholesalers and retailers subject to
36 the provisions of this chapter shall be allowed compensation for their

1 services in affixing the stamps required under this chapter a sum
2 computed at the rate of six dollars per one thousand stamps purchased
3 or affixed by them.

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

8 NEW SECTION. **Sec. 8.** Section 7 of this act takes effect July 1,
9 2002.

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