

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5372

57th Legislature
2001 Regular Session

Passed by the Senate April 16, 2001
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 5, 2001
YEAS 93 NAYS 3

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5372** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5372

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

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; amending RCW 82.24.510; adding new
3 sections to chapter 43.06 RCW; adding a new section to chapter 82.08
4 RCW; adding a new section to chapter 82.12 RCW; adding a new section to
5 chapter 82.24 RCW; creating a new section; repealing RCW 82.24.070; and
6 providing an 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 contracts concerning the sale of cigarettes. The
12 legislature finds that these cigarette tax contracts will provide a
13 means to promote economic development, provide needed revenues for
14 tribal governments and Indian persons, and enhance enforcement of the
15 state's cigarette tax law, ultimately saving the state money and
16 reducing conflict. In addition, it is the intent of the legislature
17 that the negotiations and the ensuing contracts shall have no impact on
18 the state's share of the proceeds under the master settlement agreement
19 entered into on November 23, 1998, by the state. This act does not

1 constitute a grant of taxing authority to any Indian tribe nor does it
2 provide precedent for the taxation of non-Indians on fee land.

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

5 (1) The governor may enter into cigarette tax contracts concerning
6 the sale of cigarettes. All cigarette tax contracts shall meet the
7 requirements for cigarette tax contracts under this section. Except
8 for cigarette tax contracts under section 3 of this act, the rates,
9 revenue sharing, and exemption terms of a cigarette tax contract are
10 not effective unless authorized in a bill enacted by the legislature.

11 (2) Cigarette tax contracts shall be in regard to retail sales in
12 which Indian retailers make delivery and physical transfer of
13 possession of the cigarettes from the seller to the buyer within Indian
14 Country, and are not in regard to transactions by non-Indian retailers.
15 In addition, contracts shall provide that retailers shall not sell or
16 give, or permit to be sold or given, cigarettes to any person under the
17 age of eighteen years.

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

23 (4) Cigarette tax contracts shall provide that all cigarettes
24 possessed or sold by a retailer shall bear a cigarette stamp obtained
25 by wholesalers from a bank or other suitable stamp vendor and applied
26 to the cigarettes. The procedures to be used by the tribe in obtaining
27 tax stamps must include a means to assure that the tribal tax will be
28 paid by the wholesaler obtaining such cigarettes. Tribal stamps must
29 have serial numbers or some other discrete identification so that each
30 stamp can be traced to its source.

31 (5) Cigarette tax contracts shall provide that retailers shall
32 purchase cigarettes only from:

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

35 (b) Out-of-state wholesalers or manufacturers who, although not
36 licensed to do business in the state of Washington, agree to comply
37 with the terms of the cigarette tax contract, are certified to the
38 state as having so agreed, and who do in fact so comply. However, the

1 state may in its sole discretion exercise its administrative and
2 enforcement powers over such wholesalers or manufacturers to the extent
3 permitted by law;

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

6 (d) A tribal manufacturer.

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

10 (7) Cigarette tax contracts shall include provisions for
11 compliance, such as transport and notice requirements, inspection
12 procedures, stamping requirements, recordkeeping, and audit
13 requirements.

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

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

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

22 (11) Information received by the state or open to state review
23 under the terms of a contract is subject to the provisions of RCW
24 82.32.330.

25 (12) It is the intent of the legislature that the liquor control
26 board and the department of revenue continue the division of duties and
27 shared authority under chapter 82.24 RCW and therefore the liquor
28 control board is responsible for enforcement activities that come under
29 the terms of chapter 82.24 RCW.

30 (13) Each cigarette tax contract shall include a procedure for
31 notifying the other party that a violation has occurred, a procedure
32 for establishing whether a violation has in fact occurred, an
33 opportunity to correct such violation, and a provision providing for
34 termination of the contract should the violation fail to be resolved
35 through this process, such termination subject to mediation should the
36 terms of the contract so allow. A contract shall provide for
37 termination of the contract if resolution of a dispute does not occur
38 within twenty-four months from the time notification of a violation has
39 occurred. Intervening violations do not extend this time period. In

1 addition, the contract shall include provisions delineating the
2 respective roles and responsibilities of the tribe, the department of
3 revenue, and the liquor control board.

4 (14) For purposes of this section and sections 3 through 6 of this
5 act:

6 (a) "Essential government services" means services such as tribal
7 administration, public facilities, fire, police, public health,
8 education, job services, sewer, water, environmental and land use,
9 transportation, utility services, and economic development;

10 (b) "Indian retailer" or "retailer" means (i) a retailer wholly
11 owned and operated by an Indian tribe, (ii) a business wholly owned and
12 operated by a tribal member and licensed by the tribe, or (iii) a
13 business owned and operated by the Indian person or persons in whose
14 name the land is held in trust; and

15 (c) "Indian tribe" or "tribe" means a federally recognized Indian
16 tribe located within the geographical boundaries of the state of
17 Washington.

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

20 (1) The governor is authorized to enter into cigarette tax
21 contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip
22 Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the
23 Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the
24 Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian
25 Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis
26 Confederated Tribes, and the Upper Skagit Tribe. Each contract adopted
27 under this section shall provide that the tribal cigarette tax rate be
28 one hundred percent of the state cigarette and state and local sales
29 and use taxes within three years of enacting the tribal tax and shall
30 be set no lower than eighty percent of the state cigarette and state
31 and local sales and use taxes during the three-year phase-in period.
32 The three-year phase-in period shall be shortened by three months each
33 quarter the number of cartons of nontribal manufactured cigarettes is
34 at least ten percent or more than the quarterly average number of
35 cartons of nontribal manufactured cigarettes from the six-month period
36 preceding the imposition of the tribal tax under the contract. Sales
37 at a retailer operation not in existence as of the date a tribal tax
38 under this section is imposed are subject to the full rate of the

1 tribal tax under the contract. The tribal cigarette tax is in lieu of
2 the state cigarette and state and local sales and use taxes, as
3 provided in section 2(3) of this act.

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

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 7.** RCW 82.24.070 (Compensation of dealers), as
28 now or hereafter amended, and 1987 c 496 s 5, 1987 c 80 s 2, 1971 ex.s.
29 c 299 s 14, 1965 ex.s. c 173 s 24, 1961 ex.s. c 24 s 4, & 1961 c 15 s
30 82.24.070 are each repealed.

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

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

34 (a) A wholesaler's license.

1 (b) A retailer's license.

2 (2) Application for the licenses shall be made through the master
3 license system under chapter 19.02 RCW. The department of revenue
4 shall adopt rules regarding the regulation of the licenses. The
5 department of revenue may refrain from the issuance of any license
6 under this chapter if the department has reasonable cause to believe
7 that the applicant has wilfully withheld information requested for the
8 purpose of determining the eligibility of the applicant to receive a
9 license, or if the department has reasonable cause to believe that
10 information submitted in the application is false or misleading or is
11 not made in good faith. In addition, for the purpose of reviewing an
12 application for a wholesaler's license and for considering the denial,
13 suspension, or revocation of any such license, the department may
14 consider criminal convictions of the applicant related to the selling
15 of cigarettes within the previous five years in any state, tribal, or
16 federal jurisdiction in the United States, its territories, or
17 possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW
18 shall not apply to such cases. The department may, in its discretion,
19 grant or refuse the wholesaler's license, subject to the provisions of
20 RCW 82.24.550.

21 (3) No person may qualify for a wholesaler's license under this
22 section without first undergoing a criminal background check. The
23 background check shall be performed by the liquor control board and
24 must disclose any criminal convictions related to the selling of
25 cigarettes within the previous five years in any state, tribal, or
26 federal jurisdiction in the United States, its territories, or
27 possessions. A person who possesses a valid license on the effective
28 date of this section is subject to this subsection and subsection (2)
29 of this section beginning on the date of the person's master license
30 expiration, and thereafter. If the applicant or licensee also has a
31 license issued under chapter 66.24 RCW, the background check done under
32 the authority of chapter 66.24 RCW satisfies the requirements of this
33 section.

34 (4) Each such license shall expire on the master license expiration
35 date, and each such license shall be continued annually if the licensee
36 has paid the required fee and complied with all the provisions of this
37 chapter and the rules of the department of revenue made pursuant
38 thereto.

1 NEW SECTION. **Sec. 9.** Section 7 of this act takes effect July 1,
2 2002.

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