

2 **SHB 3128 - H AMD 689 ADOPTED 3/9/00**

3 By Representative

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 cooperative agreements concerning the sale of cigarettes.  
11 The legislature finds that these agreements will provide a means to  
12 promote economic development, provide needed revenues for tribal  
13 governments and Indian persons, and enhance enforcement of the state's  
14 cigarette tax law, ultimately saving the state money and reducing  
15 conflict.

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

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

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

30 (3) A cooperative agreement with a tribe shall provide for a tribal  
31 cigarette tax in lieu of all state cigarette taxes and state and local  
32 sales and use taxes on sales of cigarettes on Indian lands by Indian  
33 retailers. The tribe may allow an exemption for sales to tribal  
34 members.

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

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

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

9 (b) Out-of-state wholesalers or manufacturers who, although not  
10 licensed to do business in the state of Washington, agree to comply  
11 with the terms of the cooperative agreement, are certified to the state  
12 as having so agreed, and who do in fact so comply. However, the state  
13 may in its sole discretion exercise its administrative and enforcement  
14 powers over such wholesalers or manufacturers to the extent permitted  
15 by law;

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

18 (d) A tribal manufacturer.

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

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

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

26 (9) Cooperative agreements may provide for the submission of  
27 disputes regarding the interpretation and administration of their  
28 provisions for judicial resolution, and, if such submissions are  
29 agreed, shall include provision for a limited waiver of sovereign  
30 immunity and consent by the state for the resolution conditioned upon  
31 a similar limited waiver of sovereign immunity by the other parties to  
32 the agreement.

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

35 (11) Information received by the state or open to state review  
36 under the terms of an agreement is subject to the provisions of RCW  
37 82.32.330.

38 (12) For purposes of this section and sections 3 through 6 of this  
39 act:

1 (a) "Essential government services" means services such as tribal  
2 administration, public facilities, fire, police, public health,  
3 education, job services, sewer, water, environmental and land use,  
4 transportation, utility services, and economic development;

5 (b) "Indian lands" means all land within the exterior boundaries of  
6 a reservation and land held in trust for a tribe or Indian person by  
7 the United States;

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

13 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
14 tribe located within the geographical boundaries of the state of  
15 Washington.

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

18 (1) The governor is authorized to enter into cooperative agreements  
19 with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, and  
20 the Muckleshoot Indian Tribe. Each agreement adopted under this  
21 section shall provide that the tribal cigarette tax rate be one hundred  
22 percent of the state cigarette and state and local sales and use taxes  
23 within three years of enacting the tribal tax and shall be set no lower  
24 than eighty percent of the state cigarette and state and local sales  
25 and use taxes during the three-year phase-in period. The three-year  
26 phase-in period shall be shortened by three months each quarter the  
27 number of cartons of nontribal manufactured cigarettes is ten percent  
28 or more than the quarterly average number of cartons of nontribal  
29 manufactured cigarettes from the six-month period preceding the  
30 imposition of the tribal tax under the agreement. Sales at a retailer  
31 operation not in existence as of the date a tribal tax under this  
32 section is imposed are subject to the full rate of the tribal tax under  
33 the agreement. The tribal cigarette tax is in lieu of the state  
34 cigarette and state and local sales and use taxes, as provided in  
35 section 2(3) of this act.

36 (2) A cooperative agreement under this section is subject to  
37 section 2 of this act.

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

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

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

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

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

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

17        (2) Effective July 1, 2001, wholesalers and retailers subject to  
18 the provisions of this chapter shall be allowed compensation for their  
19 services in affixing the stamps required under this chapter a sum  
20 computed at the rate of six dollars per one thousand stamps purchased  
21 or affixed by them.

22        NEW SECTION.    **Sec. 7.**    RCW 82.24.070 (Compensation of dealers), as  
23 now or hereafter amended, and 1987 c 496 s 5, 1987 c 80 s 2, 1971 ex.s.  
24 c 299 s 14, 1965 ex.s. c 173 s 24, 1961 ex.s. c 24 s 4, & 1961 c 15 s  
25 82.24.070 are each repealed.

26        NEW SECTION.    **Sec. 8.**    Section 7 of this act takes effect July 1,  
27 2001."

28        Correct the title.

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