

SENATE BILL REPORT

SB 6084

As Reported By Senate Committee On:
Ways & Means, March 31, 1997

Title: An act relating to transferring the enforcement of existing cigarette and tobacco taxes from the department of revenue to the liquor control board.

Brief Description: Transferring enforcement of cigarette and tobacco taxes to the liquor control board.

Sponsors: Senators West and McDonald.

Brief History:

Committee Activity: Ways & Means: 3/27/97, 3/31/97 [DPS].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6084 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Hochstatter, Long, McDonald, Roach, Rossi, Schow, Snyder, Swecker, Winsley and Zarelli.

Staff: Bryon Moore (786-7726)

Background: The state of Washington imposes a tax on the sale, use, consumption, handling, possession and distribution of cigarettes and tobacco products. Cigarettes are taxed at the rate of equal to \$.825 per pack. Tobacco products are taxed at a rate of 74.9 percent of wholesale price. In addition to the cigarette and tobacco tax, sales tax and business and occupation tax are also applicable to the sale of cigarettes and tobacco products.

According to an estimate from the Department of Revenue, the state will lose \$109 million in tax revenue in fiscal year 1997 from the sale of untaxed cigarettes. Revenue losses occur from casual smuggling from other lower-tax states and purchase of cigarettes from tax-free outlets such as military post exchanges and Indian smoke shops. Studies indicate that integrity of state cigarette tax revenues depends on the state enforcement actions.

Under federal law, the cigarette tax does not apply to cigarettes sold on an Indian reservation to an enrolled tribal member for personal consumption. However, sales made by a tribal outlet to nontribal members are subject to the tax. The United State Supreme Court has affirmed that the state may impose a cigarette tax on sales made within reservations to nontribal members and that the state may impose minimal burdens on the tribal sellers to assist in collecting the tax. Those burdens have included affixing the appropriate stamp to individual cigarette packages and keeping records that distinguish between exempt sales and taxable sales. The ability of the state to take enforcement action on-reservation and off-reservation has been the subject of several lawsuits leaving uncertain the extent of enforcement authority the state may exercise.

In 1995, the Legislature established the cigarette tax and revenue loss advisory committee to study and analyze lost cigarette tax revenues from 1992 to 1995. The study included an analysis of lost cigarette tax revenues, and an analysis of revenue losses attributable to cigarette tax increases. The study also analyzed feasibility of reducing lost revenue through negotiated agreements between state and federally-recognized Indian tribes in Washington. The committee did not reach consensus. The majority recommendation supported a cooperative approach that included negotiated agreements with the tribes. The minority recommendation opposed any agreements with the tribes and suggested more scrutiny should be given to enforcing the law against the purchases of untaxed cigarettes by nontribal consumers.

The Department of Revenue is charged with enforcing the cigarette and tobacco products tax laws and administering and collecting the taxes. Department employees do not have general police powers and must appoint as agents local law enforcement officers or State Patrol officers for certain enforcement activity such as search and seizure activity.

The Liquor Control Board enforces the laws relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, including applicable taxes and licenses. In carrying out its duties, the board employs liquor enforcement officers who have general police powers with respect to enforcing the state's liquor laws.

Summary of Substitute Bill: In transferring primary enforcement authority for cigarette and tobacco tax laws from the Department of Revenue to the Liquor Control Board, it is the intent of the Legislature that the cigarette and tobacco tax laws of the state of Washington be aggressively enforced. The Department of Revenue continues to administer and collect cigarette and tobacco taxes. The Department of Revenue must appoint as its authorized agents, enforcement officers of the Liquor Control Board to allow both the department and the board to engage in certain enforcement functions. These officers are not considered employees of the Department of Revenue. The Liquor Control Board is given authority to adopt rules necessary to enforce cigarette and tobacco laws.

According to a statutory schedule, the Liquor Control Board is required to reduce lost revenue due to cigarette and tobacco tax evasion by 50 percent within five years.

The bill has a referendum clause and is referred to the people in accordance with Article II, Section 1 of the state Constitution. If approved, the act takes effect January 1, 1998.

Substitute Bill Compared to Original Bill: An intent section is added that states that in transferring the enforcement of cigarette and tobacco tax laws to the Liquor Control Board, it is the intent of the Legislature that the cigarette and tobacco tax laws of the state of Washington be aggressively enforced. A statutory schedule for reducing lost revenue due to cigarette and tobacco tax evasion is added. A referendum clause is added referring the act to the people.

Appropriation: None.

Fiscal Note: Available.

Effective Date: If approved by the voters at the next general election, the act takes effect January 1, 1998.

Testimony For: The state is losing a tremendous amount of money due to the sale, purchase and consumption of untaxed cigarette and tobacco products. The Liquor Control Board is the most appropriate agency to enforce the cigarette and tobacco tax laws. The Liquor Control Board has been successful in enforcing the state's liquor laws and has established relations with tribes and military. Utilizing this relationship, the Liquor Control Board can ensure compliance with the state's tobacco and cigarette tax laws. All components of cigarette and tobacco tax evasion should receive focus. The Department of Revenue has not devoted the necessary resources to enforcement.

Testimony Against: The revenue lost to cigarette and tobacco tax evasion is decreasing. This would be a step back in the conciliatory and cooperative approach taken by the Department of Revenue and the tribes. Tribal compacts are the best course of action to take in pursuing voluntary compliance. Targeting consumers is not the answer to reducing cigarette and tobacco tax evasion. The Department of Revenue has been a partner with other law enforcement agencies, and has had a great deal of success in enforcing the cigarette and tobacco laws. If given the responsibility for enforcement, the Liquor Control Board needs adequate resources and the statutory authority to consult with the tribes to ensure voluntary compliance. Without this authority, the Liquor Control Board might be jeopardizing the agreements that have been reached around the state's liquor laws.

Testified: Stuart Cloud, Washington Association of Neighborhood Stores (pro); John McCoy, Tulalip Tribes (con); Dawn Vyvyan, Yakima Indian Nation (con); Fred Kiga, Department of Revenue (con); Gary O'Neil, Department of Revenue (con); Gary Gilbert, Liquor Control Board (concerns).