

HOUSE BILL REPORT

ESB 5897

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to the sale of export cigarettes.

Brief Description: Informing purchasers of cigarettes of adverse health consequences and whether the cigarettes were manufactured for consumption within the United States.

Sponsors: Senators Costa, Winsley, Thibaudeau and Oke; by request of Attorney General.

Brief History:

Committee Activity:

Commerce & Labor: 3/31/99, 4/2/99 [DPA].

Brief Summary of Engrossed Bill (As Amended by House Committee)

- Prohibits, under certain circumstances, the application of cigarette stamps on packages and containers of cigarettes making them unlawful to sell, transport or possess under state law.
- Requires that forfeited cigarettes not meeting the requirements for proper stamps must be destroyed.
- Establishes a consumer protection violation against anyone applying stamps to cigarette packages or containers that do not qualify for application of cigarette stamps.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

Staff: Pam Madson (786-7166).

Background:

It is unlawful to sell or possess cigarettes or packages of cigarettes that do not have appropriate stamps affixed to the package. Stamps indicate that the required state taxes have been paid or that the particular package is exempt from state taxation. There are a limited number of circumstances where possession, sale and transport of unstamped cigarettes are allowed.

Federal law on cigarette labeling and advertising requires all packages of cigarettes manufactured for sale in the United States to contain a warning label on the health hazards of cigarettes. Cigarettes manufactured for export are not subject to the same requirements.

Currently, it is legal to bring into the United States, cigarettes that have been manufactured for export and have been exported to another country. As of January 1, 2000, federal law limits who can purchase previously exported cigarettes to manufacturers and wholesalers who export. These products are then treated as if they have not been exported and must comply with regulations for the sale of the product in the United States.

Cigarettes that are forfeited may be kept by the seizing agency for official use or may be sold at a public auction to the highest bidder.

Summary of Amended Bill:

Even though cigarettes may be subject to state tax, no cigarette tax stamp may be placed on any package or container of cigarettes under the following circumstances: (1) The cigarette package or container differs in any respect with federal labeling and advertising laws for cigarettes sold in the United States; (2) the cigarette container has been imported after January 1, 2000, in violation of new federal requirements; (3) the product is marked for export or use outside the United States; and (4) the container has been altered to delete or change the surgeon general's warning label or the export markings.

A package or container of cigarettes that does not meet the requirements for application of cigarette stamps is subject to seizure and forfeiture. Cigarettes seized as a result of violating this new requirement must be destroyed.

It is a violation punishable as a gross misdemeanor for anyone to possess, sell or transport within the state any container or package that does not comply with the requirements regarding proper and appropriate application of cigarette stamps.

Applying stamps to packages and containers that do not qualify for stamps is a violation of the consumer protection act and may subject individuals to penalties under the act.

Amended Bill Compared to Engrossed Bill: Deletes the option of auctioning forfeited export cigarettes to bidders who qualify.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Washington, along with California, Florida and New York, has a significant problem with gray market cigarette sales. Cigarettes that are manufactured for export find their way back into this country and can be sold at a significantly lower price than cigarettes manufactured for sale domestically. Recent increases in price to pay the cost of the lawsuit are not costs passed on to export cigarette products. The export product is a different product in terms of appearance and content. This creates two problems. Consumers believe they are purchasing the domestic product when in fact they are not. Because they can be sold at a significantly lower price, even after payment of customs charges and cigarette taxes, they draw sales away from domestic cigarette products which lowers the payment to states under the recent tobacco lawsuit. As consumption decreases, payments under the lawsuit decrease. The decrease in consumption due to a shift in sales is a false decrease in that it does not represent an actual reduction in smoking. By January, 2000, federal law will severely restrict the re-importation of tobacco products. Enforcement will require a partnership between the federal and state agencies. Federal agencies will not share data or enforcement issues with the states unless there is a state law in place to share such information. It is important for states to have the ability to enforce in their own right but it will also help federal agencies to enforce federal law. The gray market is a growing problem for the tobacco industry. The re-imported tobacco product is often a stale product. A tobacco company is suing the wholesaler for using the export product in the domestic market.

Testimony Against: None.

Testified: Christine Gregoire, Attorney General; John Hough, Assistant Attorney General; T. K. Bentler, RJR Tobacco and Washington Association of Neighborhood Stores; Todd Mielke, Brown and Williamson and Lorillard Tobacco; and Greg Hewitt, Seattle-King County Department of Public Health.