

FINAL BILL REPORT

ESB 5485

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Synopsis as Enacted

Brief Description: Regulating certain tobacco product manufacturers.

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

Senate Committee on Health & Long-Term Care

House Committee on Health Care

Background: On November 23, 1998, Washington State joined 45 other states in settling litigation brought against the tobacco industry for violations of state laws concerning consumer protection and antitrust. In doing so, Washington became part of the so-called Master Settlement Agreement, which had the effect of settling ours and all the states' suits against the industry.

Four of the country's largest tobacco manufacturers signed the agreement, and thus became bound by the following conditions: the companies agreed to significant curbs on their advertising and marketing campaigns; to fund a \$1.5 billion anti-smoking campaign; and to open previously secret industry documents and disband industry trade groups. Further, they are prohibited from using cartoon characters in tobacco advertising, from targeting youth in ads and marketing, using billboards and transit advertising, and from selling and distributing apparel, backpacks and other merchandise which bear brand name logos.

The financial provisions of the Master Settlement Agreement include billions of dollars paid out to the settling states in perpetuity, beginning with up-front payments of more than \$12 billion by 2003. Washington State could receive approximately \$4.02 billion over 25 years. Annual payments will begin on April 15, 2000, and will result in Washington receiving approximately \$323 million by the end of the 1999-2001 biennium.

Settlement negotiations originated with the four major tobacco companies; however, there are tobacco product manufacturers in business now and there could be those in the future who can sell products at a reduced price with no marketing or advertising restrictions because they are not bound by the Master Settlement Agreement.

States are encouraged to pass model statutes that create a reserve fund for nonparticipating manufacturers to pay future claims. The fund would serve as a source of compensation should these companies be found culpable in future litigation, and go bankrupt or out of business, rendering them judgment-proof. Requiring that nonparticipating companies pay into this fund also provides some protection against these companies selling their products at reduced rates, undercutting the market and making huge short-term profits.

Summary: Any tobacco product manufacturer selling cigarettes to consumers in this state, whether directly or through intermediaries described in the act, is required to either join the

Master Settlement Agreement and perform its financial obligations, or place money into a qualified escrow fund. The funds placed in escrow can only be used to pay a judgment or settlement on any claim brought against the company, or to reimburse a manufacturer if an annual payment into this account is greater than the payment required under the Master Settlement Agreement. The amount nonparticipating companies pay into escrow is based on their market share. If at the end of 25 years no funds are released for the two cited reasons, all funds, including interest, are released back to the manufacturer.

Any tobacco product manufacturer that elects to place money into the escrow account must annually certify compliance with the provisions of this act with the Attorney General. The state may bring civil action on behalf of the state against any tobacco product manufacturer that fails to comply.

Votes on Final Passage:

Senate	40	8
House	77	19

Effective: May 18, 1999