

HOUSE BILL REPORT

SSB 5852

As Reported by House Committee On:

Finance

Title: An act relating to restricting the ability of tobacco product manufacturers, wholesalers, and distributors and other persons to violate or to facilitate the violation of chapter 70.157 RCW.

Brief Description: Enacting procedural enhancements to the master settlement agreement.

Sponsors: Senate Committee on Commerce & Trade (originally sponsored by Senators Honeyford, Prentice, Hewitt, Keiser, Oke and Parlette).

Brief History:

Committee Activity:

Finance: 4/1/03, 4/4/03 [DP].

Brief Summary of Substitute Bill

- Provides enforcement provisions for requirements adopted under the Tobacco Master Settlement Agreement.
- Requires tobacco manufacturers to certify to the Attorney General that they comply with the requirements for sale of cigarettes in this state.
- Requires the Attorney General to maintain a directory of cigarette brands that are permitted to be sold in this state.
- Provides penalties for possession or sale of cigarettes not on the directory maintained by the Attorney General.
- Requires reporting of cigarette sales and other supporting data by cigarette wholesalers.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 9 members: Representatives Gombosky, Chair; McIntire, Vice Chair; Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern, Conway, Morris, Roach and Santos.

Staff: Bob Longman (786-7139).

Background:

The Tobacco Master Settlement Agreement is an agreement between 46 states, the District of Columbia, six territories, and a number of tobacco product manufacturers (Participating Manufacturers). Under the agreement, Participating Manufacturers agree to make specified payments to the states and agree to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes. In exchange, the states agreed to release the Participating Manufacturers from claims by the states. Tobacco product manufacturers that did not sign the agreement (Non-Participating Manufacturers) were not released from potential state claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. In order to ensure that any state that successfully sues a Non-Participating Manufacturer in the future will have a fund against which they can recover any judgment or settlement moneys, the agreement included a proposed statute (Model Statute) which requires Non-Participating Manufacturers to make annual payments into an escrow fund based on the number of cigarettes sold in the state. The Model Statute is also intended to prevent Non-Participating Manufacturers from reaping a windfall benefit by selling cigarettes in a state without bearing the costs that cigarette smoking imposes on the state. Washington enacted the Model Statute in 1999. Several states have enacted additional statutes designed to aid in enforcing the Model Statute. These statutes have been referred to as "complementary legislation."

A tax is imposed on cigarettes at the rate of 142.5 cents per pack of 20 cigarettes. The tax is due from the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state. Taxpayers pay the tax by purchasing cigarette tax stamps from banks authorized by the Department of Revenue (Department). The stamps are placed on cigarette packs. A licensed wholesaler may possess cigarettes for a reasonable period before affixing stamps. Except for licensed wholesalers, it is unlawful to possess unstamped cigarettes unless the possessor files a notice of intent to possess with the Department before receiving the cigarettes. Cigarettes without tax stamps are contraband and subject to seizure if in the possession of anyone other than a licensed wholesaler or a person who filed a notice of intent to possess.

Summary of Bill:

Every tobacco manufacturer must provide an annual certification to the Attorney General. For Participating Manufacturers, the certification must include a list of brand families. A brand family means all styles of cigarettes sold under a particular brand name. For Non-Participating Manufacturer's, the certification must include additional information about the number of units sold under each brand family. A Non-Participating Manufacturer must also certify that: a) it is registered to do business in the state, or has appointed an agent for service of process; b) it maintains an escrow fund approved by the state; c) it is in full compliance with the escrow statute; and d) it identifies the financial

institution where it has established the escrow fund and identifies all deposits and withdrawals to and from the fund. All manufacturers must accept responsibility for the brands they have listed, in terms of compliance with the Model Statute or the escrow requirements.

The Attorney General must publish on its web site a list of the brand families of tobacco manufacturers who have complied with the certification and escrow requirements.

Foreign and nonresident Non-Participating Manufacturers must provide an agent in this state for receipt of legal process. Non-Participating Manufacturers must provide information to the Attorney General as requested on the amount of money and activity in escrow accounts. Wholesalers and distributors of cigarettes must provide quarterly reports to the director of revenue on sales of cigarettes and make available invoices and documentation of sales. Wholesalers, distributors, and manufacturers must provide information to the Department, Liquor Control Board (Board), or Attorney General as requested to show compliance with this bill. Information required under this bill is confidential and may not be disclosed without permission of the wholesaler or distributor.

It is unlawful for any person to place a cigarette tax stamp on a package of cigarettes unless the brand family is on the list on the Attorney General web site. The Board or Department may revoke or suspend the license of any wholesaler who violates this provision. The Board or Department may impose civil penalties for a violation of this provision, not to exceed the greater of 500 percent of the retail value of the cigarettes or \$5,000. The Attorney General may seek a court injunction to restrain a threatened or actual violation of this provision. It is a gross misdemeanor to sell, distribute, or possess cigarettes with tax stamps that have been affixed in violation of the requirements of this bill. Cigarettes not in compliance with the tax stamp requirements of this bill may be seized as contraband.

It is an unfair or deceptive act or practice, punishable under the consumer protection law, to violate the provisions of this bill. Only the Attorney General may bring a consumer protection action to enforce this bill.

The state is entitled to recover costs of investigation, court costs, and reasonable attorney fees for enforcement of this bill.

Any provision of this bill that conflicts with and cannot be harmonized with the Model Act is invalid.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2003.

Testimony For: It is essential that this bill or its House companion measure pass. (Testimony for companion measure SHB 1930) Most companies comply with the Master Settlement. We need better enforcement tools for those who do not. One big problem is that companies disappear when their payments are due, and the same brand suddenly pops up being made by another manufacturer. Registering the brand names will prevent this. The bill will protect the revenue under the Master Settlement. Manufacturers who comply with the settlement agreement want to see enforcement against those who do not.

Testimony Against: None.

Testified: Senator Honeyford, prime sponsor; (The following persons testified on companion measure SHB 1930) Representative Morris, prime sponsor; T.K. Bentler, Washington Association of Neighborhood Stores; Dave Horn, Attorney General's Office; Joe Daniels, Philip Morris, U.S.A.; James Der, Single Stick and U.S.A. Tobacco District; and Mark Triplett, Single Stick.