FINAL BILL REPORT
SHB 1930

C 25 L 03

Synopsis as Enacted

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

Sponsors: By House Committee on Finance (originally sponsored by Representatives Morris, Cairnes, Gombosky and Ericksen).

House Committee on Finance
Senate Committee on Commerce & Trade

Background:

The Tobacco Master Settlement Agreement (Agreement) is an agreement between two groups known as the Settling States– and the Participating Manufacturers.– The Settling States consist of 46 states, the District of Columbia, and six territories. The Participating Manufacturers include the major tobacco companies and several smaller manufacturers. A group of tobacco manufacturers that did not sign the Agreement is known as the Non-Participating Manufacturers.– 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:

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 cigarette sold under a particular brand name. For Non-Participating Manufacturers, 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 website a list of the brand families of tobacco manufacturers who have complied with the certification and escrow requirements.

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 website. The Liquor Control Board (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 act. Cigarettes not in compliance with the tax stamp requirements of this act may be seized as contraband.

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, the Board, or Attorney General as requested to show compliance with this act. Information required under this act is confidential and may not be disclosed without permission of the wholesaler or distributor.

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

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

Any provision of this act that conflicts with and cannot be harmonized with the Model

Act is invalid.

Votes on Final Passage:

House 98 0
Senate 46 0

Effective: July 1, 2003