

HOUSE BILL REPORT

HB 1943

As Reported by House Committee On:
Finance

Title: An act relating to the regulation of counterfeit cigarettes and forfeiture.

Brief Description: Modifying cigarette regulatory provisions.

Sponsors: Representatives McIntire, Delvin, Conway, Gombosky, Armstrong, Clements, Edwards and Kenney.

Brief History:

Committee Activity:

Finance: 2/27/03, 3/7/03 [DPS].

Brief Summary of Substitute Bill

- Provides that only wholesalers can affix cigarette tax stamps.
- Increases criminal penalties for selling cigarettes without a license.
- Provides criminal penalties for manufacturing, selling, or possessing for sale of counterfeit cigarettes.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill 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:

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. Possessing unstamped cigarettes or counterfeit cigarette stamps is a gross misdemeanor. Engaging in the business of purchasing, selling, consigning, or distributing cigarettes without a license from the state is a misdemeanor.

There are no criminal penalties for manufacturing or selling counterfeit cigarettes, as long as the counterfeit cigarettes have tax stamps. The owner of a trademark can bring a civil action for injunctive relief and damages against persons manufacturing or selling counterfeit cigarettes that infringe on the trademark.

Summary of Substitute Bill:

Only wholesalers may obtain or possess cigarette tax stamps. Wholesalers must not sell or provide stamps to any other person. Each roll of stamps, or group of sheets, provided to a wholesaler must have a separate and unique serial number. Retailers may obtain cigarettes only from a licensed wholesaler. These provisions do not limit any otherwise lawful activity under a cigarette tax compact with an Indian tribe.

The criminal classification for engaging in the business of purchasing, selling, consigning, or distributing cigarettes without a license is increased from a misdemeanor to a class C felony.

The manufacturing, selling, or possessing for sale of counterfeit cigarettes is prohibited.

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counterfeit cigarette is defined as any cigarette, or its packaging, that resembles an authentic cigarette or package and has been manufactured by someone not authorized by the trademark or brand holder. Violations are class C felonies, punishable with fines and imprisonment, with increasingly severe penalties for subsequent violations or amounts greater than two cartons of counterfeit cigarettes. For repeat violations, the fine can be as much as \$50,000 or five times the retail value of the cigarettes involved, and/or imprisonment not to exceed five years. The Department may also revoke the license of any wholesaler or retailer involved with counterfeit cigarettes.

Substitute Bill Compared to Original Bill:

The substitute removes a statutory requirement that cigarettes be stamped within 72 hours, leaving intact an administrative rule that requires stamps within 72 hours except for certain bonded distributors. The substitute adds class C designation to criminal

penalties.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is a proactive measure supported by legitimate cigarette manufacturers. We have seen a huge increase in counterfeit cigarettes. Some have false tax stamps. It is very difficult to tell them from the real thing. This bill will provide enforcement tools that will reduce the sale of counterfeit cigarettes and protect tax revenue.

Testimony Against: None.

Testified: Representative McIntire, prime sponsor; and Joe Daniels, Philip Morris U.S.A.