

SENATE BILL REPORT

SB 5852

As Reported By Senate Committee On:
Commerce & Trade, March 5, 2003

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: Senators Honeyford, Prentice, Hewitt, Keiser, Oke and Parlette.

Brief History:

Committee Activity: Commerce & Trade: 2/27/03, 3/5/03 [DPS].

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 5852 be substituted therefor, and the substitute bill do pass.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; Franklin, Keiser and Mulliken.

Staff: John Dziedzic (786-7784)

Background: In 1998, 46 states, including Washington, signed a "Master Settlement Agreement" (MSA) with leading tobacco companies. The tobacco manufacturers participating in the MSA agreed to make payments to the states and abide by marketing restrictions. The states agreed to release the "participating manufacturers" from certain claims by the states.

The MSA encourages states to adopt a "model statute" relating to tobacco manufacturers that did not sign the MSA ("non-participating manufacturers" or NPMs). The statute requires NPMs to deposit funds into an escrow account each year, based on the volume of cigarette sales in the state. This is intended to ensure that there will be funds available to a state if an NPM is successfully sued in the future. Washington enacted the model law in 1999: Chapter 70.157 RCW.

Throughout the country, some NPMs are not complying with the escrow requirement of the model laws. To respond to NPM noncompliance issues without adversely affecting the MSA, 33 other states have either enacted or are now considering "complementary statutes" similar to SB 5852.

Summary of Substitute Bill: All tobacco products manufacturers whose cigarettes are sold in Washington must identify the manufacturer's "brand families" to the Attorney General. Only those cigarettes listed in a directory maintained by the Attorney General may be sold in the state. When the Attorney General removes a product from the directory, wholesalers holding such products may obtain refunds from manufacturers, and from the state for stamp taxes paid. A system for obtaining otherwise confidential records is established to assist in

resolving disputes over the amount required to be placed in escrow. Only the Attorney General may invoke the Consumer Protection Act to enforce the statute.

NPMs must also certify that the NPM (a) is complying with the escrow provision of RCW 70.157 and (b) has appointed an agent for service of process in Washington.

Substitute Bill Compared to Original Bill: Provisions are added relating to (a) when a product is removed from the directory, and the refund options then available to wholesalers; (b) the voluntary sharing of confidential records; and (c) the application of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Tobacco manufacturers that do not comply with the escrow requirement of the MSA are able to sell tobacco products for less. This undercuts manufacturers who are complying with the MSA. It also puts less expensive cigarettes on the market, which are more likely to be attractive to underaged purchasers. Reduced sales by complying manufacturers reduce the amount paid to Washington under the MSA. This bill provides the Attorney General with better tools with which to pursue noncompliant manufacturers, without jeopardizing the nationally negotiated settlement agreement.

Testimony Against: None.

Testified: PRO: T. K. Bentler, WA Association of Neighborhood Stores; Dave Horn, Office of the Attorney General; James A. Deer, Single Stick, Inc. (concerns).