

SENATE BILL REPORT

ESB 5485

As Passed Senate, February 24, 1999

Title: An act relating to a reserve account for tobacco product manufacturers not participating in the master settlement agreement.

Brief Description: Regulating certain tobacco product manufacturers.

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

Brief History:

Committee Activity: Health & Long-Term Care: 2/3/99, 2/4/99 [DP].
Passed Senate, 2/24/99, 40-8.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass.

Signed by Senators Wojahn, Vice Chair; Costa, Franklin and Johnson.

Staff: Rhoda Jones (786-7198)

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 of Bill: Any tobacco product manufacturer selling cigarettes to consumers in this state, whether directly or through intermediaries described in the bill, 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.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This legislation is necessary to assure the state receives the full settlement amount.

Testimony Against: None.

Testified: PRO: Christine Gregoire, Attorney General; Paul Zemann, SKCDPH; Ward Hinds, WA State Assn. of Local Public Health Office.