

SENATE BILL REPORT

SHB 1943

As Reported By Senate Committee On:
Commerce & Trade, March 27, 2003

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

Brief Description: Modifying cigarette regulatory provisions.

Sponsors: House Committee on Finance (originally sponsored by Representatives McIntire, Delvin, Conway, Gombosky, Armstrong, Clements, Edwards and Kenney).

Brief History:

Committee Activity: Commerce & Trade: 3/27/03 [DP].

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: Do pass.

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

Staff: John Dzedzic (786-7784)

Background: The state tax on cigarettes is due from the "first person who sells, uses, consumes, handles, possess or distributes" cigarettes in Washington. Licensed cigarette wholesalers pay the tax by purchasing stamps from banks authorized by the Department of Revenue.

The possession of unstamped cigarettes within the state's jurisdiction is a gross misdemeanor, unless the possessor is (a) a person transporting unstamped cigarettes who has notified the state prior to receipt of the cigarettes; (b) the United States, or an agency thereof; (c) an Indian tribal organization operating under a cigarette tax contract; or (d) a licensed cigarette wholesaler. In any other circumstances, cigarettes without tax stamps are subject to seizure by the Liquor Control Board, acting as the enforcement agent of the Department of Revenue.

It is a felony to forge or counterfeit cigarette tax stamps. It is not a crime to produce or sell counterfeit cigarettes, although the owner of a trademark may bring a civil action to enjoin a person from infringing on the mark, and to recover damages.

Summary of Bill: Only licensed cigarette wholesalers may purchase or possess cigarette tax stamps, and are prohibited from selling or otherwise transferring tax stamps. Cigarette retailers may obtain cigarettes for resale only from licensed cigarette wholesalers, and are prohibited from possessing unstamped cigarettes in their place of business. The penalty for buying, selling, or distributing cigarettes without a license is increased from a misdemeanor to a class C felony.

Counterfeit cigarettes are defined to be cigarettes and cigarette packaging that resembles a trademarked brand, which are manufactured by an entity other than the trademark holder, or

the holder's authorized licensee. Counterfeit cigarettes, and the machinery and equipment used to manufacture, distribute and sell them, are subject to seizure. Possession or sale of counterfeit cigarettes is a class C felony, and is punishable by fines that increase depending upon the quantity of counterfeit cigarettes possessed and whether there have been prior violations.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The distribution of counterfeit cigarette products is an emerging problem. It affects not only income for legitimate cigarette product manufacturers, but also tax revenue and payments under the Master Tobacco Settlement Agreement. This bill makes additional procedures and enforcement tools available to address this issue.

Testimony Against: None.

Testified: PRO: Joe Daniels, Phillip Morris USA; Rick Phillips, Liquor Control Board.