

HOUSE REVENUE COMMITTEE
MAY 2, 2003 8:30 AM STATE CAPITOL BUILDING

Members Present: Representative Lane Shetterly, Chair
Representative Wayne Scott, Vice Chair
Representative Joanne Verger, Vice Chair
Representative Phil Barnhart
Representative Vicki Berger
Representative Pat Farr
Representative Mark Hass
Representative Elaine Hopson
Representative Max Williams

Witness Present: Pete Shepherd, Oregon Attorney General's Office
Marshall Coba, The Council of Independent Tobacco
Manufacturers of America
Jim Gardner, Phillip Morris
Mark Nelson, R.J. Reynolds Tobacco

Staff Present: Paul Warner, Legislative Revenue Officer
Richard Yates, Legislative Revenue Office
Kathy Tooley, Committee Assistant

TAPE 153, SIDE A

006	Chair Shetterly	Calls meeting to order at 8:40 a.m.
010	Chair Shetterly	MOVES INTRODUCTION OF LC 3606, (Exhibit 1), AS A COMMITTEE BILL.
013	Chair Shetterly	Clarifies the bill is entered as a Revenue Committee Bill, but does not indicate support or opposition by the members of the Committee.
015	Chair Shetterly	ORDER THERE BEING NO OBJECTION, THE CHAIR SO ORDERS: Members Present: Shetterly, Barnhart, Berger, Farr, Hass, Hopson, Scott, Verger. Excused Williams.

OPENED WORK SESSION ON HB 2368

026	Richard Yates	Discussed amendments to -8 amendments replaced by -11 (Exhibit 2); -9 amendments replaced by -12 amendments (Exhibit 3).
036	Yates	The -11 has the broader requirements.
038	Chair Shetterly	The -11 has full, private, and Attorney General enforcement power.
041	Yates	-A12 replaces the -A9, and is limited to Attorney General only enforcement power over provisions of the act.
044	Yates	Described -A13 amendment (Exhibit 4). Discussed the qualifying statute under the Master Settlement Agreement (MSA) and its requirements. Discussed requirements for escrow monies for non-participating manufacturers (NPM).

065	Yates	Discussed new wording in Section 82 and -11 vs. -12 amendments.
088	Chair Shetterly	Authored the -13 amendment, the intent for those in compliance is to limit enforcement to Department of Justice (DOJ) action; those out of compliance are open to private and public enforcement.
120		Questions and discussion regarding similarities and differences to drug houses.
143	Pete Shepherd	As to -13 amendments has same position as with -8 amendment. Do not object to them as -9 (-12) is adequate. Do not object to -A13s.
170	Rep. Verger	How is there a difference between illegal traffic in drugs vs. cigarettes as far as enforcement of the public is concerned.
172	Shepherd	No difference. Discussed private action, in anti-trust area, competitors can sue other competitors; in the drug house area there is not a competitor vs. competitor situation.
187	Rep. Barnhart	In drug house case, a neighbor could have common law cause of action under a nuisance theory, what's different, why wouldn't anybody have a common law cause of action.
195	Shepherd	Amendments being discussed will create a new statutory scheme to regulate delivery sales. Current prohibitions are to delivery of tobacco to minors. There is no statutory framework that provides this kind of marketing tool for a specific regulatory scheme.
203	Rep. Verger	Would like to draw similarities, to discourage minors from buying cigarettes. Public interest for this to be turned into revenue for the State of Oregon.
211	Shepherd	Would agree, have collaborated with DOR, Oregon State Police and the Tobacco Compliance Task Force.
232	Chair Shetterly	If a private right of action is not authorized, could somebody file a complaint and allege a common law basis? This clarifies there is a claim if Committee approve a private right of action.
235	Shepherd	If a statute is written, there would not be a question. If you don't put in the statute don't think anyone could infer a claim if not provided for explicitly in the amendments.
243	Marshall Coba	Spoke In support of -12 amendments, reiterated comments from previous day's hearing. 2368-A12 and HB 2490 provide for adequate enforcement in the tobacco world.
275	Coba	Case has not been made that the private side, in addition to Oregon's Attorney General, is going to collect additional revenue.
284	Chair Shetterly	In looking at -13s, only subject to private right of action if non-participating, but you are also noncompliant. If you are non-participating, but in compliance, the -13 would give safe harbor.
299	Coba	We're not sure if the line is very bright, the compliance issue is the key. Question is what is compliance and what is non-compliance?
308	Chair Shetterly	What are 293.535?

310 Yates That is the definition of a non-participating manufacturer.

311 Chair Shetterly Asked Shepherd, is this a bright line or not a bright line?

310 Shepherd Question of bright line vs. non-bright line, discussed escrow statute and lack of ambiguity. These are not all slam dunk cases, but the statutory scheme is a clear roadmap for a NPM that wants to comply. Are there differences in Oregon Department of Justice and NPMs? Sure.

352 Rep. Barnhart At issue is: are the resources available to AG's office. Do you have the wherewithal to do the level of enforcement needed for a significant problem?

367 Shepherd Two kinds of enforcement responsibilities: First to MSA to diligently enforce the NPM area. That area needs legislative help to be fully funded; believe AG's office has complied but at costs to other programs.

391 Shepherd Regarding resources to enforce compliance with tobacco tax laws. This is funded thru Tobacco Task Force through the next biennium.

419 Rep. Verger If you bring in 3 times the amount of money, it seems to me that you have paid for that enforcement. Does it not work that way? Does above the line go to the state?

400 Shepherd I think, that is the way the tobacco task force is operating. Discussed how funds are controlled and expended. For NPM, under current law AG's office not allowed to cover cost from the wrong doer and is addressed in HB 2094.

460 Yates One comment with the issue coming up, the revenue impact provided for the -A10s fits the later amendment as regards where the money comes from for the health plan.

TAPE 153, SIDE A

014 Jim Gardner Discussed distinctions between -11 but the -13s are better than 12s from perspective of law enforcement. Explained the -11s allow private enforcement of the internet sales provisions aimed at strengthening safeguards against internet sales to minors.

031 Gardner With -13s, if manufacturer compliant with escrow provision, there would be no private sector enforcement of the internet sales protection aimed at prohibiting sales to minors.

038 Gardner With -11s the benefit of private sector enforcement of internet sales provisions for protecting minors, whether or not the manufacturer was compliant.

042 Mark Nelson Discussed loss of revenues to Oregon: Prior to MSA, NPMs were under 2%; after MSA it is up to 13% in 5 years. At 13% because many NPMs are not abiding by state laws relating to escrow accounts. They have grown because they can offer cigarettes at cheaper prices. If sales go down, funds to states go down under MSA. This is an attempt to curb that.

072 Rep. Barnhart **MOTION: MOVED ADOPTION OF THE -A11 AMENDMENT INTO HB 2368.**

076 Rep. Barnhart The State of Oregon has a strong interest in supporting the MSA and the revenues derived under that agreement including the highest level of enforcement to ensure compliance with the rules. There is an additional

interest for compliance with the statute, because that is where Oregon derives revenue. Revenue is not derived from funds deposited in an escrow account. Discussed additional interest in protecting the health of minors, private action will increase the likelihood that sale of inexpensive tobacco products to minors will not be encouraged.

- 112 Rep. Verger Cited elimination of people from the Oregon Health Plan. Would support an increase in tax on cigarette taxes. Knowing people are not complying, would support strongest enforcement possible.
- 128 Rep. Farr Agonized over decision, support the -11s for its potential revenue impact, and it is a strong statement that would help cut down on youth smoking.
- 139 **ROLL CALL: MOTION PASSED 6-2-1**
REPRESENTATIVES VOTING AYE: Barnhart, Farr, Hass, Scott, Verger, Chair Shetterly. REPRESENTATIVES VOTING NO: Berger, Williams. EXCUSED: Hopson.
- 106 Rep. Barnhart **MOTION: MOVED HB 2368 AS AMENDED TO THE HOUSE FLOOR WITH A DO PASS RECOMMENDATION AND A SUBSEQUENT REFERRAL TO WAYS AND MEANS.**
- ROLL CALL: MOTION PASSED 8-0-1**
REPRESENTATIVES VOTING AYE: Barnhart, Berger, Farr, Hass, Scott, Verger, Williams, Chair Shetterly.
- 167 Chair Shetterly Meeting adjourned at 9:35 a.m.

Tape Log Submitted by,

Kathy Tooley, Committee Assistant

Exhibit Summary:

1. Chair Shetterly, "LC 3606", 5 pages
2. Yates, "HB 2368-A11 Amendment", 9 pages
3. Yates, "HB 2368-A12 Amendment", 8 pages
4. Yates, "HB 2368-A13 Amendment", 9 pages