

Committee Name:
Senate Committee –
Judiciary, Corrections and Privacy
(SC–JCP)

Appointments

03hr_SC–JCP_Appt_pt00

Committee Hearings

03hr_SC–JCP_CH_pt00

Committee Reports

03hr_SC–JCP_CR_pt00

Clearinghouse Rules

03hr_SC–JCP_CRule_03–

Executive Sessions

03hr_SC–JCP_ES_pt00

Hearing Records

03hr_ab0494

03hr_sb0000

Misc.

03hr_SC–JCP_Misc_pt00

Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

September 22, 2003

The Honorable Dave Zien, Chair
Senate Committee on Judiciary, Privacy & Corrections
The State Capitol
Room No. 15 South
HAND DELIVERED

The Honorable Mark Gundrum, Chair
Assembly Committee on Judiciary
Room No. 19 North
HAND DELIVERED

Re: Senate Bill 245 & Assembly Bill 494
Non-participating tobacco manufactures enforcement legislation

Dear Legislators:

I write to urge your quick passage of SB245 and AB494, model legislation drafted by the National Association of Attorneys General (NAAG). This legislation is essential to the continuation of the state's tobacco revenue stream. Without this legislation, the state risks significant legal exposure to securitization bondholders and to manufacturers that are parties to the Master Settlement Agreement (MSA). Failure to adopt this legislation, in its current form, may also result in the loss of millions of dollars to the state's bondholders and could ultimately eliminate the entire tobacco payments contemplated under the MSA.

Last June, I wrote to all legislative leaders urging the quick adoption of this legislation and highlighting the potential dangers of failing to do so. At the committees' hearing last week, Assistant Attorney General Charlotte Gibson presented you with detailed information showing that Wisconsin has already lost more than \$10 million in tobacco revenue for the coming year. Quite frankly, the state cannot afford the legal liability or financial exposure that failing to pass this legislation would create.

The model legislation contained in these two bills has been vetted with all necessary parties to the MSA over the last several months. Any change to the language presented here would almost certainly invalidate these extensive negotiations. The only opportunity to fulfill the state's due diligence enforcement obligations under the MSA and avoid excessive risks to our revenue stream is to pass SB245 and AB494 as they were presented to the committee. Any additional amendments to either bill, beyond the committee amendment currently pending, would negate all of the work leading up to this point and expose the state to great financial and legal risk.

When the states signed on to the MSA with the leading tobacco manufacturers, they agreed to enact and diligently enforce a model statute requiring non-participating manufacturers (NPMs) to either join the MSA or to fund certain escrow accounts. The escrow accounts had two purposes: to even the playing field among all manufacturers, whether they made MSA payments or not; and to give the states a fund to draw from in the event they ever obtained a judgment for public health costs. Wisconsin enacted that legislation in 2000 at Wis. Stat. § 895.10. Wisconsin remains obligated under the MSA to diligently enforce that statute, and we expect, given the financial incentives for participating manufacturers to do so, that multiple states will be sued regarding their enforcement for 2003 and beyond.

The legislation before you addresses several hurdles that the States have faced in enforcing the model statute. For the past several months, my office has been working closely with NAAG, Attorneys General in many other states, the participating manufacturers and other Wisconsin stakeholders to draft this legislation. Until the very day of the hearing, no concerns were ever raised with respect to this legislation.

As you know, however, a last-minute speaker, Tony Troy, appeared at the hearing to speak in opposition to two aspects of the legislation. I will address a few of the issues raised by his testimony here. I note, however, that the changes proposed by the last-minute opponent have little to do with the public policy of the proposals and everything to do with a timed effort to delay the State's enforcement.

At the hearing, Mr. Troy expressed several inaccurate statements. The most basic is that NPM compliance and sales have no effect on MSA payments. This is false. NPM sales affect MSA payments by reducing the Participating Manufacturers' market share, and thus required payments. Non-compliant NPM cigarettes, which cost a fraction of Participating Manufacturer cigarettes, erode that market share far more. Further, the NPM adjustment, which Mr. Troy claims has never been levied, has already been taken. Wisconsin has already lost millions of dollars due to NPM sales.

Another basic untruth was that NPM tobacco companies would be unfairly treated by this legislation. Nothing could be further from the truth. Under current law, a Participating Manufacturer pays \$15,689.85 for Wisconsin sales (about 31¢ per pack) per 1,000,000 sticks sold. The NPM places \$13,612.50 in escrow (about 27¢ per pack), but, if all its sales are in Wisconsin, currently receives a release of \$13,275.46. Only less than 2.5 percent of the original deposit - \$337.04 (about 0.7¢ per pack) - remains in escrow for the 25 years. This clearly subverts the purposes of the escrow statute and creates an unintended advantage for NPMs. The NPM enjoys a 50-fold cost advantage over the Participating Manufacturer and can easily undersell them. Further, if the State seeks to recover its public health costs relating to those 1 million sticks, only \$337—not even enough to cover the State's filing and service fees—is in the escrow account.

This loophole in current law has allowed non-compliant manufacturers with unpaid escrow in many states to "cure" their violation in a only few states, begin selling large quantities of cigarettes in those limited markets, and then to receive almost complete escrow refunds while their obligations in other states go unpaid. Mr. Troy has been unwilling to tell any State the names of his manufacturer clients. We do not know his clients, but they may well be among those scofflaws that have manipulated the cigarette market to circumvent the consequences of breaking the law in other states.

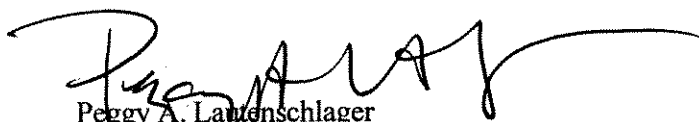
The model legislation before you levels the playing field for all manufacturers. It ensures that, in the event the State seeks to recover public health costs from an NPM, there is a meaningful fund available to pay a judgment. Under the example above, the legislation will simply require the NPM to leave the \$13,612.50 in the escrow account unless that amount exceeds what the NPM would have made as a PM in MSA payments. In this example, because the NPM already is escrowing less than what it would have paid as a PM, it would not be entitled to a refund.

Mr. Troy also told committee members that seventeen states had rejected the allocable share provisions contained in this bill. This statement was inaccurate and untrue. To date, seventeen states have approved the allocable share provisions of this bill. In only one state, Delaware, have these provisions been rejected. In that case, it is my understanding that the Attorney General was not directly involved in the negotiations or presentation of this legislation.

I hope that you will see beyond the last-minute attempts of opponents to this legislation and move quickly to adopt this legislation. This legislation is necessary to assist the state in enforcing the model statute and to ensure continued payments under the MSA.

Thank you for your attention to this matter. As always, please feel free to call me with any questions or concerns you may have.

Very truly yours,



Peggy A. Lappenschlager
Attorney General

PAL: vlv

file
SB 245

WISCONSIN SENATE BILL 245 & ASSEMBLY BILL 494
HELPING THE ATTORNEY GENERAL PRESERVE THE MSA BY
ENFORCING WISCONSIN'S ESCROW STATUTE

Good morning. I'm Charlotte Gibson, the Assistant Attorney General responsible for enforcing and managing our tobacco law. I'm here to testify in support of SB 245 and AB 494. Thank you for providing the opportunity to testify and for considering this important legislation.

As many of you will remember, almost five years ago, Wisconsin and 45 other States signed the landmark Master Settlement Agreement, the MSA, with major tobacco manufacturers. Since that time, dozens of other tobacco manufacturers have signed on to the MSA, as well. Those companies are making payments to the States and complying with public health provisions.

Other cigarette manufacturers have not signed on to the MSA. At the time the States signed the MSA, they were concerned that such non-participating companies, called "NPMs," could significantly undersell participating companies. The States were also concerned that, if the States ever sought a judgment for public health costs against an NPM, the judgment would not be collectible. Thus, the States agreed to pass a model statute, codified here in Wisconsin at 895.10, which would require NPMs to put money into escrow for every package of cigarettes sold in the State. The amount of the escrow was to be similar to what the payment they would have made under the MSA, and it would be available to satisfy a judgment against them by a State.

The States also agreed under the MSA that the participating manufacturers could reduce their MSA payments if they lost significant market share to NPMs. Finally, the States agreed that, if they were found to be not diligently enforcing their model statutes, the participating manufacturers could reduce or withhold their payment altogether from those States.

Five years later, we have good news and bad news. The good news is that Wisconsin has low sales by NPMs – currently less than 1/7 of the average for a state our size. Further, we have relatively good compliance so far.

The bad news is that, nationwide, some NPMs are flouting our laws. Most of these companies are located abroad, and it is difficult and expensive to locate them and obtain a judgment when they do not comply. Further, other NPMs, while nominally complying with the letter of the law, are utilizing a loophole to receive almost all of their escrow payments back. Instead of paying an amount into escrow roughly equivalent to MSA payments, they are paying as little as 2 percent of that amount. Partly as a result of these tactics, the States' MSA payments are declining. Wisconsin is expected to lose over \$10 million in its MSA payment next year due to national rising NPM sales. Further, the States may be facing litigation from the participating manufacturers or, in States that have securitized, suits from bondholders.

The bills before you today address these problems. They enhance the Attorney General's ability to enforce our model statute by requiring tobacco companies to set up their escrow accounts prior to sale and to agree to local service. They strengthen the ability of the Attorney General and Department of Revenue to cease sales if escrow payments are not made.

They also close the loophole in the model statute. They allow escrow refunds only when an NPM can show that it escrowed more than it would have had to pay under the MSA for the number of cigarettes sold in Wisconsin.

The simple amendment to the bills before you modifies our statutes' default severability rule. The amendment makes clear that, should the change to the model statute ever be challenged successfully on constitutional grounds, that the model statute as originally enacted would remain in effect. This language assures that Wisconsin meets our MSA obligation regardless of any challenges NPMs might raise in litigation.

This legislation is part of a national effort by Attorneys General around the country. 38 other States have enhanced the ability of their Attorney General to enforce their Escrow Statute by enacting complementary legislation, including 28 that have passed the model complementary legislation in our bills. 17 States have closed the loophole in their Escrow Statutes by passing the allocable share amendment. Many other States are working to enact both parts of the legislation in the coming legislative session.

The Attorney General endorses this legislation as a key component in upholding our obligation to enforce the model statute. I urge you to join the many States that have already taken action and passed this legislation. We appreciate your taking the time to consider this important issue. I'd be happy to answer any questions that the Committee members have.



STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

VICE CHAIRPERSON

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

MEMBER

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

MEMORANDUM

TO: Senator Tim Carpenter, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: November 3, 2003 (hand delivered 1:15pm)

RE: Paper Ballot for AB 475 and AB 494 (2 pages)

Please consider the following bills and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 3:30pm (today), November 3, 2003.** Committee members' ballots not received by the deadline will be marked as not voting.

Assembly Bill 475

Relating to: marriage between one man and one woman.

Introduced by Representatives Gundrum, W. Wood, Hundertmark, Nischke, J. Fitzgerald, Weber, Albers, Nass, Grothman, M. Lehman, Montgomery, LeMahieu, Ott, Gottlieb, F. Lasee, Kreibich, Kestell, Pettis, Seratti, Suder, Ladwig, Freese, Hines, Gunderson, Krawczyk, Lothian, Huebsch, Friske, Petrowski, Towns, Van Roy, Honadel, Bies, Hahn, Olsen, D. Meyer and Owens; cosponsored by Senators S. Fitzgerald, Leibham, Zien, Stepp, Reynolds, Lazich, Schultz, Kanavas and Roessler.

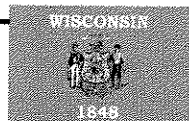
Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 475 be recommended for CONCURRENCE:

Aye _____ No

Assembly Bill 494

Relating to: tobacco settlement agreement enforcement and providing penalties.



Introduced by Representatives Vrakas, Nischke, Jeskewitz, Rhoades, Miller, M. Lehman, Van Roy, Ladwig, Nass, Taylor, Bies and McCormick; cosponsored by Senators S. Fitzgerald, Kedzie, Lassa, Breske and Welch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 494 be recommended for CONCURRENCE:

Aye ✓ No

Signature Tim Carpenter
Senator Tim Carpenter



STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
 VICE CHAIRPERSON
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
 MEMBER
 COMMITTEE ON SENATE ORGANIZATION
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
 SENTENCING COMMISSION
 COUNCIL ON TOURISM
 JUDICIAL COUNCIL

MEMORANDUM

TO: Senator Cathy Stepp, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: November 3, 2003 (hand delivered 1:15pm)

RE: Paper Ballot for AB 475 and AB 494 (2 pages)

Please consider the following bills and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 3:30pm (today), November 3, 2003.** Committee members' ballots not received by the deadline will be marked as not voting.

Assembly Bill 475

Relating to: marriage between one man and one woman.

Introduced by Representatives Gundrum, W. Wood, Hundertmark, Nischke, J. Fitzgerald, Weber, Albers, Nass, Grothman, M. Lehman, Montgomery, LeMahieu, Ott, Gottlieb, F. Lasee, Kreibich, Kestell, Pettis, Seratti, Suder, Ladwig, Freese, Hines, Gunderson, Krawczyk, Lothian, Huebsch, Friske, Petrowski, Towns, Van Roy, Honadel, Bies, Hahn, Olsen, D. Meyer and Owens; cosponsored by Senators S. Fitzgerald, Leibham, Zien, Stepp, Reynolds, Lazich, Schultz, Kanavas and Roessler.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 475 be recommended for CONCURRENCE:

Aye No

Assembly Bill 494

Relating to: tobacco settlement agreement enforcement and providing penalties.



Introduced by Representatives Vrakas, Nischke, Jeskewitz, Rhoades, Miller, M. Lehman, Van Roy, Ladwig, Nass, Taylor, Bies and McCormick; cosponsored by Senators S. Fitzgerald, Kedzie, Lassa, Breske and Welch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 494 be recommended for CONCURRENCE:

Aye ✓ No _____

Signature 
Senator Cathy Stepp



STATE SENATOR DAVE ZIEN

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

VICE CHAIRPERSON

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

MEMBER

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Scott Fitzgerald, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: November 3, 2003 (hand delivered 1:15pm)

RE: Paper Ballot for AB 475 and AB 494 (2 pages)

Please consider the following bills and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 3:30pm (today), November 3, 2003.** Committee members' ballots not received by the deadline will be marked as not voting.

Assembly Bill 475

Relating to: marriage between one man and one woman.

Introduced by Representatives Gundrum, W. Wood, Hundertmark, Nischke, J. Fitzgerald, Weber, Albers, Nass, Grothman, M. Lehman, Montgomery, LeMahieu, Ott, Gottlieb, F. Lasee, Kreibich, Kestell, Pettis, Seratti, Suder, Ladwig, Freese, Hines, Gunderson, Krawczyk, Lothian, Huebsch, Friske, Petrowski, Towns, Van Roy, Honadel, Bies, Hahn, Olsen, D. Meyer and Owens; cosponsored by Senators S. Fitzgerald, Leibham, Zien, Stepp, Reynolds, Lazich, Schultz, Kanavas and Roessler.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 475 be recommended for CONCURRENCE:

Aye No

Assembly Bill 494

Relating to: tobacco settlement agreement enforcement and providing penalties.



Introduced by Representatives Vrakas, Nischke, Jeskewitz, Rhoades, Miller, M. Lehman, Van Roy, Ladwig, Nass, Taylor, Bies and McCormick; cosponsored by Senators S. Fitzgerald, Kedzie, Lassa, Breske and Welch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 494 be recommended for CONCURRENCE:

Aye X No _____

Signature

Scott Fitzgerald
Senator Scott Fitzgerald