

# Assembly Hearing Slip

(Please print plainly)

Date: MARCH 22, 2000

Bill No. AB 898

Or Subject \_\_\_\_\_

Name LIZ BUCHEN

Street Address or Route Number 10 E. Doty St. Ste 500

City and Zip Code MADISON 53703

Representing Philip Morris Inc.

Speaking in favor:	<input type="checkbox"/>
Speaking against:	<input type="checkbox"/>
Registering in favor:	<input checked="" type="checkbox"/>
Registering against:	<input type="checkbox"/>
Speaking for information only:	<input type="checkbox"/>
Neither for nor against:	<input type="checkbox"/>

**Please promptly return this slip to the messenger at the committee.**

Provided by:  
Assembly Sergeant at Arms  
411 West, State Capitol  
Madison, WI 53708

# Assembly Hearing Slip

(Please print plainly)

Date: 3/22/00

Bill No. 898

Or Subject \_\_\_\_\_

Name Melby Johnson

Street Address or Route Number \_\_\_\_\_

City and Zip Code \_\_\_\_\_

Representing Author

Speaking in favor:	<input checked="" type="checkbox"/>
Speaking against:	<input type="checkbox"/>
Registering in favor:	<input type="checkbox"/>
Registering against:	<input type="checkbox"/>
Speaking for information only:	<input type="checkbox"/>
Neither for nor against:	<input type="checkbox"/>

**Please promptly return this slip to the messenger at the committee.**

Provided by:  
Assembly Sergeant at Arms  
411 West, State Capitol  
Madison, WI 53708

# Assembly Hearing Slip

(Please print plainly)

Date: 3/22

Bill No. AB 898

Or Subject \_\_\_\_\_

Name Tom Ourak DOR

Street Address or Route Number Jim Jenkins / John Nordlie

City and Zip Code \_\_\_\_\_

Representing \_\_\_\_\_

Speaking in favor:	<input checked="" type="checkbox"/>
Speaking against:	<input type="checkbox"/>
Registering in favor:	<input type="checkbox"/>
Registering against:	<input type="checkbox"/>
Speaking for information only:	<input type="checkbox"/>
Neither for nor against:	<input type="checkbox"/>

**Please promptly return this slip to the messenger at the committee.**

Provided by:  
Assembly Sergeant at Arms  
411 West, State Capitol  
Madison, WI 53708

Assembly Hearing Slip

(Please print plainly)

Date: 3/22/00  
Bill No. AB 898  
Or Subject  
MICHAEL R. VAUGHAN  
(Name)  
P.O. Box 2038  
(Street Address or Route Number)  
MADISON, WI 53701  
(City & Zip Code)  
R.S. REYNOLDS TOBACCO CO.  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:
- Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms  
Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date:  
Bill No. 898  
Or Subject  
Jim Teufel  
Name  
16 N. Carroll St.  
Street Address or Route Number  
City and Zip Code  
Brown & Williams Tobacco  
Representing

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:
- Neither for nor against:

Please promptly return this slip to the messenger at the committee.

Provided by  
Assembly Sergeant at Arms  
411 West State Capitol  
Madison, WI 53708

# Assembly Committee on Ways and Means

AB 898  
 ??

DATE \_\_\_\_\_  
 Moved by God Seconded by Test  
 AB \_\_\_\_\_ SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_  
 A \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

- Be recommended for:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Passage<br><input type="checkbox"/> Introduction<br><input type="checkbox"/> Adoption<br><input type="checkbox"/> Rejection | <input type="checkbox"/> Indefinite Postponement<br><input type="checkbox"/> Tabling<br><input type="checkbox"/> Concurrence<br><input type="checkbox"/> Nonconcurrence |
|---|---|

	Committee Member	Aye	No	Absent	Not voting
1.	Rep. Mickey Lehman, chair	1			
2.	Rep. Tom Sykora, vice-chair	2			
3.	Rep. Bob Goetsch	3			
4.	Rep. Mike Huebsch	4			
5.	Rep. Frank Lasee	5			
6.	Rep. John Ainsworth	6			
7.	Rep. Suzanne Jeskewitz	7			
8.	Rep. Carol Owens	8			
9.	Rep. Joan Spillner	9			
10.	Rep. Wayne Wood	10			
11.	Rep. John La Fave	11			
12.	Rep. Lee Meyerhofer	12			
13.	Rep. Johnie Morris-Tatum	13			
14.	Rep. Jeffrey Plale	14			
15.	Rep. Bob Turner				
16.	Rep. Bob Ziegelbauer	15			
	Totals				

MOTION CARRIED

MOTION FAILED



SB 409 Yes

AB89845

AB 853 yes

AB 894 yes

AB 726 yes

AB 860 yes

Joan Spillner

Votes



## **BILL SUMMARY**

**AB 898: Gray Market Cigarette Bill**

**Date: March 28<sup>th</sup>, 2000**

### **BACKGROUND**

Under current law, it is illegal to possess cigarettes without the appropriate tax stamps affixed to the packaging. Depending on the number of cigarette packages in question, the penalties of monetary fines and imprisonment vary.

### **SUMMARY OF AB 898**

Under AB 898, the penalties for possessing cigarette packages without tax stamps will also apply to those that affix tax stamps to cigarette packages that are:

- 1) Intended for sale outside the United States
- 2) Labeled as provided under federal law as not for consumption inside the United States
- 3) Modified by a person who is not the cigarette manufacturer or an authorized agent of the cigarette manufacturer.

Also, AB 898 allows any person to bring a suit for damages or injunctive relief against a person who affixes tax stamps to cigarettes that are intended for sale outside the United States.

### **AMENDMENTS**

AB 898 has no amendments. However, AB 898 does incorporate SA1 and SA2 to SB 413. SA1 to SB 413 is a technical change. SA2 to SB 413 modifies the legislation to allow for individuals returning to the United States with cigarettes purchased outside of the United State for personal use. SA2 to SB 413 also modifies the legislation to account for cigarettes to be sold in duty free stores.

### **FISCAL EFFECT**

A fiscal estimate prepared by the Department of Revenue indicates that there would be no fiscal effect from this legislation.

### **PROS**

The sale of the so-called gray-market cigarettes has a negative impact for the state of Wisconsin in regards to the tobacco settlement. The gray market cigarettes (cigarettes not intended for sale in the US) are marketed in a way so that their packaging is confusingly similar to those manufacturers that are a part of the tobacco settlement. Gray market cigarette sales are not part of the tobacco settlement and therefore do not contribute to tobacco settlements made to the state. With the increase of cigarette prices, which is at least partly due to the tobacco settlement, the gray market cigarettes have begun to appear in much greater numbers in the domestic market. AB 898 is directed to the illegal gray market cigarette sales and is important in protecting Wisconsin's tobacco settlement payments.

### **CONS**

None.

### **SUPPORTERS**

Rep. Michael Lehman, author; Sen. Judy Robson, lead co-sponsor.

### **OPPOSITION**

None.

### **HISTORY**

Assembly Bill 898 was introduced on March 20, 2000, and referred to the Assembly Committee on Ways and Means. A public hearing was held on March 22, 2000. On March 22, 2000, the Committee voted 15-0 [Rep. Turner absent] to recommend passage of AB 898.

**CONTACT:** Andrew Nowlan, Office of Rep. Michael Lehman



Michael (Mickey)  
**Lehman**

State Representative  
58th Assembly District

---

Committee Chair: Ways and Means

## Memorandum

To: Members, Assembly Ways and Means Committee

From: Rep. Mickey Lehman

Date: March 21<sup>st</sup>, 2000

Re: AB 898

Attached please find copies of materials for tomorrow's hearing and exec in Ways and Means on Assembly Bill 898, the "Gray Market Cigarette Bill."

---

Office: P.O. Box 8952, State Capitol, Madison, WI 53708-8952 • (608) 267-2367 • Toll-Free Legislative Hotline: (800) 362-9472  
Home: 1317 Honeysuckle Road, Hartford, WI 53027 • (414) 673-7979

58th District Includes - CITIES: Cedarburg, Hartford and West Bend (Wards 23-29, 34-38, 40, 41, 43-47); VILLAGES: Jackson, Neosho and Slinger;  
TOWNS: Addison, Cedarburg (Wards 1,2,3,6, and 7), Hartford, Jackson, Polk (Wards 1, 2, 3, 4, 5 and 8), Rubicon, Trenton and West Bend

  
Printed on recycled paper with a soy base ink.

February 28, 2000

**GRAY MARKET BILLS WOULD PROTECT  
STATE'S PAYMENTS UNDER THE TOBACCO SETTLEMENT**

1. Under the tobacco settlement, there are three categories of manufacturers:
  - "Original Participating Manufacturers"—Philip Morris, RJR, B&W, and Lorillard.
  - "Subsequent Participating Manufacturers"—Others who sign on to the settlement.
  - "Non-participating manufacturers"—Who don't sign on to the settlement.
2. Only Original Participating Manufacturers and Subsequent Participating Manufacturers make annual payments to the State under the settlement.
3. Escrow payments made by Non-Participating Manufacturers under "Exhibit T" legislation do not go to the State.

This money is not paid to the State, does not belong to the State, cannot be spent by the State, and must be returned to the manufacturer after 25 years, unless the State sues the manufacturer and gets a judgment against or settles with the manufacturer.

*Therefore, payments made by non-participating gray market manufacturers into these escrow accounts do not go to the State.*

4. Gray market sales *reduce* payments to the State by the Original Participating Manufacturers and Subsequent Participating Manufacturers.

The annual payments to the State under the tobacco settlement are based on the annual sales volume of the Original Participating Manufacturers.

*Therefore, if gray market manufacturers drain sales away from the Original Participating Manufacturers, the annual payments to the State are reduced.*

5. The per-unit payments to the State by Subsequent Participating Manufacturers are lower than the per-unit payments by the Original Participating Manufacturers.

*Therefore, if any gray market manufacturers join the tobacco settlement and drain sales away from the Original Participating Manufacturers, the State will receive lower per-unit payments on the cigarette sales they siphon away.*

6. By preventing the sale of gray market cigarettes in State, the gray market bills thus would protect the State's payments under the tobacco settlement.



January 31, 2000

## **HOW GRAY MARKET CIGARETTE SALES REDUCE MSA PAYMENTS TO THE STATES**

Under the Master Settlement Agreement ("MSA"), the four manufacturers that originally signed the agreement ("Original Participating Manufacturers" or "OPMs"), as well as other manufacturers that subsequently signed the agreement ("Subsequent Participating Manufacturers" or "SPMs"), must make annual payments that are allocated among the settling states according to a formula set forth in Exhibit A to the MSA. Although the "base" amount of the annual payments is specified in the MSA, these annual payments are subject to various adjustments, including a "Volume Adjustment" reflecting changes in the domestic sales volume of the OPMs from year to year. If the domestic sales volume of the OPMs declines, the amount of the annual payments the OPMs and SPMs must make to the states under the MSA is reduced.<sup>1</sup>

"Gray market" cigarettes are cigarettes produced in the U.S. or abroad, for sale abroad, that use trade names, trademarks or trade dress identical to, or confusingly similar to, the trade names, trademarks and trade dress used by cigarettes produced for sale in the U.S. These gray market cigarettes, themselves, in some cases are not identical to the cigarettes produced for domestic sale whose packaging their packaging resembles; they do not involve the same promotions; they cannot provide the same assurances of freshness; and in some cases they are not even produced by the same manufacturer. Gray market cigarettes present serious issues of trademark infringement and consumer deception, among others.

As the prices of cigarettes produced by the OPMs for domestic sale have increased, reflecting in large measure costs associated with the settlement of the state lawsuits, cheaper "gray market" cigarettes have begun to flood the market. These cigarettes—either produced in the U.S. for export, but then diverted or reimported into the U.S.; or produced abroad for sale abroad, but then imported into the U.S.—have been siphoning sales from cigarettes, whose packaging their packaging resembles, that were produced by the OPMs for domestic sale.

By definition, gray market cigarettes are not "shipped in or to" the United States or Puerto Rico by the OPMs. By siphoning sales of cigarettes produced by the OPMs for domestic sale, gray market cigarette sales reduce the domestic sales volume of the OPMs,

---

<sup>1</sup> In particular, the OPMs' payment obligations are based on "the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico" by the OPMs. [MSA, Exhibit E, § (A), at p. E-1.] The OPMs' annual payments decrease if their "actual" domestic sales volume in a given year falls below their "base" domestic sales volume in 1997. [*Id.* § (B), at p. E-1.] So do the annual payments of the SPMs. [*Id.* § IX(i)(2), pp. 78-79.]

thereby reducing the OPMs' and SPMs' payment obligations to the states under the MSA. As a result, the payments by the OPMs and SPMs to the states may decrease, even if the number of cigarettes sold in the United States stays exactly the same. That is, no fewer cigarettes are sold; but, insofar as sales migrate from cigarettes produced by the OPMs for sale in the U.S. to copycat gray market cigarettes, the sales volume used for purposes of calculating OPM and SPM payments decreases, and the OPM and SPM payments to the states are reduced correspondingly.