SB 305

Department of Legislative Services

Maryland General Assembly
1999 Session

FISCAL NOTE
Revised

Senate Bill 305 (Senators Green and Forehand)
Judicial Proceedings

Tobacco Product Manufacturers - Settlement of State Claims - Nonparticipating Manufacturers - Deposits of Funds in Escrow - Model Statute

This bill requires tobacco product manufacturers who sell their cigarettes in Maryland and are not participating in the "Master Settlement Agreement" to establish a qualified escrow fund to be used for any payments due in future judgements or settlements. The bill also provides that: (1) these manufacturers must contribute a certain amount to the reserve fund per cigarette sold; (2) the funds from the reserve fund can be released only under specified circumstances; (3) the manufacturers must annually certify to the Attorney General that they are in compliance with the provisions of this bill; and (4) if a manufacturer fails to comply with the provisions of this bill, civil action may be brought against it by the State, with monetary penalties and a possible prohibition from selling its products in Maryland for a specified period of time.

The bill is effective June 1, 1999.

Fiscal Summary

State Effect: None. If the bill is enacted, the proceeds from the tobacco settlement will not be affected because the settlement will not be adjusted for non-participating manufacturers. Without this bill, Maryland's tobacco settlement payments could be reduced by as much as 65%.

Local Effect: None.

Small Business Effect: None.

Fiscal Analysis

Background: On November 23, 1998 the Attorneys General and other representatives of 46 states, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam, and the District of Columbia signed an agreement with the 5 largest tobacco manufacturers (Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Phillip Morris Incorporated, R.J. Reynolds Tobacco Company, and Liggett & Myers), ending a 4-year legal battle between the states and the industry that began in 1994 when Mississippi became the first state to file a civil suit against the tobacco companies. Four states (Florida, Minnesota, Mississippi, and Texas) had previously settled with tobacco manufacturers.

The agreement settles all antitrust, consumer protection, common law negligence, statutory, common law and equitable claims for monetary, restitutionary, equitable and injunctive relief alleged by any of the settling states with respect to the year of payment or earlier years and cannot be modified in any way unless all the parties agree to the modification.

Over the next 25 years, states will receive over $206 billion from the settlement. Maryland is expected to receive $4.6 billion of the settlement funds.

Under the provisions of the agreement, states must begin implementation of the settlement agreement immediately. States that had suits pending were required to begin actions to settle the suits and to get the consent decree implementing the settlement agreement filed by December 11, 1998. The other states were required to file the necessary paperwork by December 23, 1998. This began the process of obtaining State Specific Finality, the trigger for access to the state funds.

Bill Summary: The “Master Settlement Agreement” refers to the settlement agreement and related documents entered into November 23, 1998 by the State and leading United States tobacco product manufacturers. Under this agreement state legislatures are required to consider and enact the "model statute" included in the settlement agreement.

Participating manufacturers have raised their prices for tobacco products in order to pay for the settlement payments due to the states. However manufacturers who did not participate in the settlement could potentially increase their profits by offering lower prices for their tobacco products. Consequently, the model statute is designed to provide a level playing field between participating and non-participating tobacco manufacturers with respect to price.

The bill requires non-participating tobacco product manufacturers who sell their products in Maryland to deposit into a qualified escrow fund by April 15 of each year the following amounts (adjusted for inflation):

- for 1999, \$.0094241 per unit sold after the date of enactment of this Act;
- for 2000, \$.0104712 per unit sold after the date of enactment of this Act;
- for 2001 and 2002, \$.0136125 per unit sold after the date of enactment of this Act;
- for 2003, 2004, 2005, and 2006, \$.0167539 per unit sold after the date of enactment of this Act; and
- for 2007 and each year thereafter, \$.0188482 per unit sold after the date of enactment of this Act.

The funds placed into escrow will be released only to pay for a judgement or settlement against a tobacco product manufacturer by the State or any party located in or residing in Maryland. The funds will be released in the order in which they were placed into the escrow fund and only to the extent and at the time necessary to make the required payment.

The funds placed in escrow will earn interest and other appreciation. Twenty-five years from the date the funds were placed into escrow, they will revert back to the tobacco product manufacturer.

A non-participating tobacco product manufacturer must certify to the Attorney General that it placed the appropriate amount of funds in escrow by April 15 each year, or the Attorney General may bring a civil action on behalf of the states against the manufacturer. Any tobacco product manufacturer who fails in any year to place into escrow the funds specified above will have 15 days to place these funds into the fund to be considered in compliance of this bill. If the manufacturer fails to do so, the court may impose a civil penalty against the manufacturer: (1) in an amount not to exceed 5% of the amount improperly withheld from the escrow fund; and (2) in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

If the tobacco manufacturer knowingly withholds funds from escrow and does not place the funds into the escrow fund within 15 days, the court may impose a civil penalty against the manufacturer: (1) in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation; and (2) in a total amount not to exceed 300% of the original amount improperly withheld from escrow. Also, the tobacco manufacturer may not be permitted to sell its products to Maryland consumers for a maximum of 2 years for a second violation.

State Revenues: If this bill is enacted, the estimated tobacco settlement payments Maryland will receive in the future will not be affected. However, State tobacco settlement payment revenues could be reduced significantly in the future if this bill does not pass and if there are non-participating manufacturers. If this model statute is not passed and if there are non-participating manufacturers, Maryland's settlement payments will be adjusted based on the participating manufacturers' market shares that have been lost to the non-participating manufacturers, which could be as much as a 65% reduction.

Information Source(s): Comptroller of the Treasury (Alcohol and Tobacco Division), Department of Legislative Services

Fiscal Note History: First Reader - February 15, 1999
dmm/jr Revised - Correction - February 16, 1999
Revised - Senate Third Reader - March 23, 1999

Analysis by: Joanna Rooney

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510