HB 889

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 889 (Delegate Wood)
Health and Government Operations Judicial Proceedings

Tobacco Product Manufacturers - Nonparticipating Manufacturers - Escrow Requirements

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This bill requires tobacco product manufacturers whose cigarettes are sold in the State to periodically submit specified certifications, reports, and notices to the Attorney General. The Attorney General is required to maintain a directory of tobacco product manufacturers and their brand families that are approved for stamping and sale. The bill prohibits the stamping, selling, or importing of cigarettes not in the directory for sale in the State. The bill establishes criminal penalties and authorizes the Comptroller to revoke or suspend wholesaler licenses and impose civil penalties for violation of the prohibition. The bill also requires cigarette manufacturers to appoint an agent for the service of process. If appropriations are made from the Cigarette Restitution Fund (CRF), .15% is required to be distributed for the enforcement of the bill.

Should this bill be in conflict with any of the provisions of Chapter 169 of 1999, as amended by Chapter 141 of 2001, which established the Master Settlement Agreement Model Statute, the provision of those Acts shall control.

The first report required of licensed wholesalers is due by October 1, 2003, covering the period July 1, 2003 through September 30, 2003; the first certification by a tobacco product manufacturer is due by August 15, 2003; and the directory required of the Attorney General is to be made available by September 15, 2003.

The bill takes effect June 1, 2003.

Fiscal Summary

State Effect: General fund expenditure increase of approximately $125,500 in FY 2004. Future years represent annualization and inflation. Pursuant to the bill, approximately

$275,500 from the CRF could be available for enforcement in FY 2004. The bill's civil penalty provisions are not expected to significantly affect State revenues or expenditures.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	$0	$0	$0	$0	$0
GF Expenditure	125,500	153,900	162,400	171,400	181,200
Net Effect	($125,500)	($153,900)	($162,400)	($171,400)	($181,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The civil penalty provisions of this bill are not expected to significantly affect local revenues or expenditures.

Small Business Effect: Minimal.

Analysis

Current Law: Under the Master Settlement Agreement (MSA), discussed below, state legislatures are required to consider and enact the "model statute" included in the settlement agreement.

The State's model statute requires nonparticipating tobacco product manufacturers who sell their products in Maryland to either participate in the MSA and perform the financial obligations of participating manufacturers under the agreement or 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 enactment of the model statute;
- for 2000, $.0104712 per unit sold after the date of enactment of the model statute;
- for 2001 and 2002, $.0136125 per unit sold after the date of enactment of the model statute;
- for 2003, 2004, 2005, and 2006, $.0167539 per unit sold after the date of enactment of the model statute; and
- for 2007 and each year thereafter, $.0188482 per unit sold after the date of enactment of the model statute.

The funds placed into escrow will be released only to pay for a judgment 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 payments under the judgment or settlement.

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

A nonparticipating 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 State 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 in escrow to be considered in compliance with the model statute. 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 per day of violation; and (2) in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

If the tobacco product 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 product manufacturer must be prohibited from selling its products to Maryland consumers for a maximum of two years for a second violation.

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 five largest tobacco manufacturers (Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Phillip Morris Incorporated, R.J. Reynolds Tobacco Company, and Liggett & Myers), ending a four-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 settled 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 may not be modified in any way unless all the parties agree to the modification.

Over the course of 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 were required to 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.

State Fiscal Effect: Expenditures for the Attorney General's Office could increase by an estimated $125,453 in fiscal 2004, which accounts for a 90-day start-up delay from the bill's June 1, 2003 effective date. This estimate reflects the cost of hiring one assistant attorney general and one paralegal to provide legal and managerial support related to the specific legal and reporting requirements of the bill in order to enforce the nonparticipating manufacturer requirement of the MSA. Failure to provide diligent enforcement of this provision of the MSA could result in a loss of cigarette restitution funds.

The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

Salaries and Fringe Benefits	$104,103
Operating Expenses	21,350
Total FY 2004 State Expenditures	**$125,453**

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The Department of Legislative Services advises that the bill requires that .15% of the appropriation for CFR be used to enforce the provisions of the bill. The fiscal 2004 budget allowance from CFR is $183.7 million. Therefore, for fiscal 2004, approximately $275,500 would be available to cover the administrative and enforcement costs associated with the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 603 (Senator Kelley) – Judicial Proceedings and Budget and Taxation.

Information Source(s): Comptroller's Office, Office of the Attorney General, Department of Legislative Services

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