SB 240

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 240 (Senator Green, *et al.*)

Judicial Proceedings Health and Government Operations

Tobacco Product Manufacturers − Master Settlement Agreement − Escrow Requirements

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This bill changes the formula for the early release of escrow funds deposited by a tobacco product manufacturer that is not participating in the Master Settlement Agreement (MSA) between certain tobacco product manufacturers and the State. It specifies that the escrow payments must be based on the units sold in Maryland. If those escrow payments exceed the amount the manufacturer would be required to pay as a party to MSA, any excess reverts back to the manufacturer. Uncodified language in the bill changes the termination and severability provision in statute to conform to MSA model language.

The bill takes effect June 1, 2004.

Fiscal Summary

State Effect: Potential significant increase in special fund revenues to the Cigarette Restitution Fund annually beginning June 1, 2004. No effect on expenditures.

Local Effect: None.

Small Business Effect: Significant effect on small business tobacco product manufacturers who may sell fewer cigarettes and would have to maintain all of the necessary funds in escrow.

Analysis

Current Law: In 1998, Maryland and 45 other states signed MSA with the four largest tobacco product manufacturers in the U. S. MSA requires these manufacturers to pay the states in exchange for the states releasing them of past, present, and certain future claims. The manufacturers also must fund a national public health foundation and change their advertising and marketing practices and corporate culture to reduce underage smoking.

Chapter 169 of 1999, amended by Chapter 141 of 2001, enacted the MSA model statute, which requires tobacco product manufacturers to either join MSA or deposit funds into escrow based on the number of cigarettes that they sell in Maryland. Tobacco product manufacturers not included in MSA must contribute to an escrow fund to pay a judgment or claim brought by the State or any releasing party located or residing in the State. A releasing party includes: (1) public entities and educational institutions; and (2) persons or entities seeking relief on behalf of the general public or seeking to recover health care expenses paid or reimbursed by the State. Funds can be released early from escrow under certain circumstances. Otherwise, the escrow funds are released after 25 years. Interest or other appreciation earned on escrow payments revert back to the tobacco product manufacturer.

The Attorney General may bring a civil action against any tobacco product manufacturer that does not place funds into an escrow account.

Background: MSA settled State lawsuits against the tobacco companies to recover costs associated with treating smoking-related illnesses. The tobacco industry is expected to pay the 46 states more than $200 billion over 25 years. Maryland's share is: $141.7 million in fiscal 2001, $158.1 million in fiscal 2002, $164.0 million in fiscal 2003, and an estimated $141.5 million in fiscal 2004. These funds are deposited into the State's Cigarette Restitution Fund from which the State supports cancer and tobacco programs, the Maryland Medical Assistance Program (Medicaid), crop conversion, substance abuse treatment, and other initiatives.

According to the Office of the Attorney General, this bill is expected to close an unintended loophole in the MSA model statute that permits a manufacturer that has geographically concentrated sales to obtain a refund of the vast majority of its escrow deposits. This refund allows a manufacturer to significantly lower the price of its cigarettes. As a result, the manufacturer may take sales away from MSA-participating manufacturers which results in reduced payments MSA-participating manufacturers make to the states. The lower cigarette price also makes them more attractive to youth, who tend to be more price-sensitive than adults.

There also has been a reduction in the volume of cigarettes shipped by the original participating manufacturers, which contributes to lower MSA payments to the states.

However, the most significant source of the reduction is the end of initial payments ($60 million per year). MSA payments will increase in fiscal 2008 when strategic payments begin.

According to the National Association of Attorneys General, there are at least 19 states that have already enacted similar legislation: Alabama, California, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Michigan, Montana, New York, Ohio, Oklahoma, Oregon, Vermont, Washington, West Virginia, and Wisconsin. The remaining state legislatures from MSA-participating states have either introduced legislation similar to this bill or are expected to introduce legislation in the near future.

State Fiscal Effect: To the extent that this bill closes an unintended loophole in the MSA model statute that contributes to reduced MSA payments to the State, special fund revenues from MSA payments to the State's Cigarette Restitution Fund could increase annually beginning June 1, 2004. The exact amount cannot be precisely determined because of various other factors that also influence the amount of MSA payments to the State.

While this bill will result in an increase in the amount of funds left in escrow accounts for tobacco product manufacturers not participating in MSA, this will not have an effect on State revenues or expenditures because those funds are not at the State's disposal unless they are tapped to settle a lawsuit.

Additional Information

Prior Introductions: None.

Cross File: HB 477 (Delegate Doory, *et al.*) − Appropriations.

Information Source(s): Maryland State Department of Education, Department of Health and Mental Hygiene, Attorney General's Office, National Association of Attorneys General, Department of Legislative Services

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