

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1052

(Delegates Rosenberg and Wood)

Health and Government Operations

Judicial Proceedings

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Tobacco Product Manufacturers - Master Settlement Agreement - Definitions -  
Modifications

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This bill includes in the definition of “units sold” unstamped “roll-your-own” tobacco containers, with each 0.09 ounces of “roll-your-own” tobacco equaling one unit sold, for purposes of the model statute required under the Master Settlement Agreement (MSA) between certain tobacco manufacturers and the State. The bill also makes technical changes to certain definitions.

The bill takes effect June 1, 2006.

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Fiscal Summary

**State Effect:** None. The change is technical in nature and would not directly affect governmental finances.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** In 1998, Maryland and 45 other states signed MSA with the four largest tobacco product manufacturers in the United States. 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 reverts 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.

Chapter 348 of 2004 changed the formula for the early release of escrow funds deposited by a tobacco product manufacturer that is not participating in MSA. It specified 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 changed the termination and severability provision in statute to conform to MSA model language.

**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, after making the required payments to the Law Offices of Peter Angelos, is: \$141.9 million in fiscal 2000, \$108.5 million in fiscal 2001, \$218.6 million in fiscal 2002, \$135.2 million in fiscal 2003, \$134.2 million in fiscal 2004, \$122.0 million in fiscal 2005, \$123.6 million in fiscal 2006, and an estimated \$152.3 million in fiscal 2007. These funds are deposited into the State's Cigarette Restitution Fund (CRF) from which the State supports cancer and tobacco programs, the Maryland Medical Assistance Program (Medicaid), crop conversion, substance abuse treatment, and other initiatives.

#### *Significant Reductions in CRF Funding Possible*

Recent actions by several subsequent participating manufacturers threaten to reduce the amount of revenue available to the states. Such actions are unrelated to this bill. Nevertheless, these manufacturers contend that manufacturers not participating in MSA

have exploited legal loopholes to reduce their payments to the states, giving those manufacturers a competitive advantage in the pricing of their products. Approximately \$84 million has been placed in escrow by the subsequent participating manufacturers pending resolution of the dispute by an arbitration. This amount, as well as \$105 million overdue from the manufacturers, has reduced revenue immediately available to the State of Maryland by \$4 million.

The possibility remains that additional companies, including the four original participating manufacturers, will withhold funds based on loss of market share. MSA authorizes manufacturers that lose a certain share of the market to withhold three times the amount of their losses. Based on preliminary estimates, an action of this sort has the potential to reduce payments under MSA by up to \$1.1 billion or 18%, of which Maryland's share is approximately \$26 million. The reduction would be applied to the fiscal 2006 payment due April 15, 2006. Industry leaders are in the process of reviewing past payments to determine the amount of losses.

It is difficult to anticipate at this time the magnitude or timing of challenges to payments under MSA. The nature of these disputes may vary based on state laws, the level of enforcement, and the amount of competition from nonparticipating manufacturers; likewise, the timeline and ultimate disposition of these cases will likely vary by jurisdiction.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 797 (Senator Green) – Judicial Proceedings.

**Information Source(s):** Department of Health and Mental Hygiene, Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2006  
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