

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 154**

As Agreed to March 30, 2009

Brief*

SB 154 would amend the Requirements for Sale of Cigarettes Act to provide enhanced enforcement of the Master Settlement Agreement (MSA) escrow statutes to ensure continued receipt of MSA payouts.

Among other changes, the bill would:

- Change the resident agent requirements for Non-participating Tobacco Manufacturers (NPMs) and would require the NPMs to provide irrevocable written consent that actions brought under this Act may be commenced against the NPM in the Third Judicial District (Shawnee) by service of process on the resident agent;
- Require a new NPM, or a “high risk” for noncompliance NPM as reasonably determined by the Attorney General in accord with the factors provided in the bill, to post a bond of at least \$50,000;
- Require a stamping agent to provide written assurance of compliance with the Act, under penalty of perjury;
- Authorize the Kansas Department of Revenue (KDOR) to suspend or revoke the license of any stamping agent violating this Act. Additionally, the KDOR would be authorized to impose a civil penalty in an amount not to

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exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000;

- Authorize the Attorney General to file an injunction to restrain a stamping agent from a threatened or actual violation of the Act and to compel the stamping agent to comply with the Act;
- Create a new class B misdemeanor crime to sell, distribute, or possess cigarettes in violation of this Act;
- Create a new class A misdemeanor for NPMs to submit false information:
 - About a brand family listed on the directory;
 - That it is a Participating Manufacturer (PM);
 - That it has made all required escrow payments;
 - That it has satisfied any other requirements imposed by this Act;
- Make violations of this Act involving the sale or attempted sale of cigarettes by a stamping agent to a retail dealer or consumer, or by a retail dealer to a consumer, a deceptive trade practice under the Kansas Consumer Protection Act;
- Make it illegal to affix or cause to be affixed tax stamps to tobacco products of Tobacco Product Manufacturers (TPMs) not listed on the directory;
- Update the statutory language requiring the Attorney General to develop a directory of all TPMs that have provided current and accurate certifications; and
- Require all TPMs to annually certify that they are either a participating manufacturer to the MSA, or a non-participating manufacturer that is in compliance with the

Kansas escrow laws and all of the relevant rules and regulations.

Additional changes were technical and clarifying in nature.

Conference Committee Action

The Conference Committee adopted the House amendments to the bill with the following changes:

- Delete the provisions of SB 154 relating to summary proceedings in a *habeas corpus* action;
- Insert the provisions of SB 159 relating to the Requirements for Sale of Cigarettes Act; and
- Delete the provisions that would provide no wholesale dealer or distributor of roll-your-own tobacco products shall be issued a license or renewal license unless reasonable assurances are made that the stamping agent requirements in this Act are met.

Background

In 1998, Kansas became one of 46 states (Settling States) to accept a tobacco settlement negotiated with four major tobacco companies. (The remaining four states; Florida, Minnesota, Mississippi, and Texas, settled individually.) The settlement, called the Master Settlement Agreement (MSA), is aimed at reducing the use of tobacco by young persons, settling legal claims by states against the tobacco industry, and providing reimbursement for health care costs of treating Medicaid patients whose illnesses were caused by tobacco. Under terms of the MSA, the tobacco industry is prohibited from targeting youth in marketing and is subject to restrictions concerning sponsorships, advertising, and tobacco promotions.

Pursuant to this agreement, Kansas receives a payout of approximately \$55 million per year, plus an estimated additional \$15 million per year from 2008 through 2017 depending on, among other things, nationwide cigarette and roll-your-own tobacco sales.

The MSA does not impose any constraints on how the states may use their tobacco money. In Kansas, the 1999 Legislature enacted legislation that established a trust fund into which tobacco payments are credited and created the Kansas Children's Cabinet to advise the Governor and the Legislature on programs that will be funded from tobacco money. The trust fund, named the "Kansas Endowment for Youth (KEY) Fund," is invested and managed by the Board of Trustees of the Kansas Public Employees Retirement System. The Legislature also created the Children's Initiatives Fund and provided that transfers would be made from the KEY Fund to the Children's Initiatives Fund on an annual basis. Transfers from the KEY Fund to the Children's Initiatives Fund are capped at \$45 million, plus a 2.5 percent annual inflation factor.

To receive this money, Settling States, including Kansas, must "diligently enforce" certain laws ensuring that Non-participating Tobacco Manufacturers to the MSA deposit the required funds into individual escrow accounts. According to the Attorney General's Office, the majority of the other MSA Settling States already have adopted most of the legislation proposed in the bill.

The proponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was Patrick Broxterman, Assistant Attorney General.

There was no testimony in opposition to the bill in the Senate Committee hearing.

The House Committee on Judiciary made changes that were of a technical and clarifying nature, at the request of the Attorney General's Office.

According to the fiscal note on the bill, as introduced, the Office of Attorney General and the Office of the Secretary of State indicate that the passage of the bill would have no fiscal effect on their agencies' budgets. The bill has the potential for increasing litigation in the courts because of the new violations created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

tobacco; Master Settlement Agreement; sale of cigarettes act; Nonparticipating Tobacco Manufacturers;