

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 273**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 273 would amend statutes related to the tobacco Master Settlement Agreement (MSA).

Policy Statement (Section 1)

The bill would add a policy statement that it is consistent with Kansas policy to require tobacco manufacturers that have not entered into the MSA (non-participating manufacturers or NPMs) to pay directly to the State an amount that:

- Prevents such manufacturers from deriving large, short-term profits and then becoming judgment proof;
- Requires such manufacturers to internalize the healthcare costs imposed on the State by cigarette smoking;
- Increases the price of such manufacturer's cigarettes, thereby reducing smoking rates, particularly among youth, consistent with the State's policy of discouraging underage smoking; and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Serves as partial compensation for the financial burdens imposed on the state by cigarette smoking.

Change from Escrow to Payments to Kansas Endowment for Youth Fund (Sections 2 through 4)

Under current law, NPMs are required to pay \$.0188482 per unit sold into a qualified escrow fund, which may be released to pay certain judgments or settlements or to the extent an amount paid in a particular year was in excess of the payment the NPM would have made under the MSA if it had been a participating manufacturer, with the balance released to the NPM 25 years after the date they were placed into escrow.

The bill would require, for 2022 and each year thereafter, an NPM to remit to the Director of Taxation (Director) the same amount that is currently paid into escrow, instead of paying such amount into escrow. The Director would remit such amounts to the State Treasurer and, upon certification by the Attorney General that the NPM did not seek a credit or refund within one year of the date of remittance, the State Treasurer would deposit the entire amount in the state treasury to the credit of the Kansas Endowment for Youth Fund (KEY Fund).

The bill would include procedures allowing an NPM who remits funds under the new provisions to seek a credit or refund, within one year of the date of remittance, to the extent such amount was greater than the NPM would have made under the MSA if it had been a participating manufacturer.

Certification, enforcement, procedural, and other provisions would be amended to reflect the change from escrow payments to remittance of funds to be credited to the KEY Fund. Failure to fully pay the required remittance for any period for any brand family, whether or not listed by the NPM, would be added to the list of reasons an NPM or brand family

shall not be included or retained in the directory that allows payment of tax due upon cigarettes or sale of cigarettes in Kansas.

Restoration of Current Law (New Sections 5 through 9)

The bill would provide, in the event that all or any portion of the amendments made by the bill in Section 2 (replacing escrow with payments to the KEY Fund) are adjudged by a court to be unconstitutional or invalid, the Attorney General shall certify to the Secretary of State that such adjudication has occurred, whereupon the Secretary of State would cause a notice of such certification to be published in the *Kansas Register*. On and after January 1, 2022, if such publication occurs, the amendments made in Sections 1 and 2 of the bill would be deemed to be repealed, and Sections 5 through 8 of the bill would take effect, as of the date of publication of the notice, restoring current law. The bill would state that no holding of unconstitutionality or repeal of Sections 1 and 2 would affect, impair, or invalidate any other portions of Sections 5 through 8, or the application of such sections to any other person or circumstance, and Sections 5 through 8 would at all times continue if full force and effect.

[*Note:* Sections 5 through 8 of the bill contain the current content of the statutes amended by Sections 1 through 4 of the bill, with minor technical changes. Section 9 of the bill contains the triggering mechanism described above.]

Background

As introduced and passed by the Senate, SB 273 contained provisions related to the Kansas Emergency Management Act. Language based on these provisions was included in the conference committee report on SB 40, which was adopted by the Legislature and subsequently signed by the Governor on March 24, 2021.

On March 25, 2021, the House Committee on Judiciary recommended a substitute bill for SB 273 containing the contents of HB 2451, regarding the tobacco Master Settlement Agreement.

HB 2451 (Master Settlement Agreement)

In 1998, Kansas became one of 46 states to accept a tobacco settlement negotiated with four major tobacco companies. 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.

Each state and territory receives the proportion of the settlement that its smoking-related health care costs bear to the total. In FY 2020, Kansas received \$53,329,192 in tobacco payments related to the MSA.

In 1999, the Legislature passed legislation that established a trust fund (the KEY Fund) into which tobacco payments are credited and created the Kansas Children's Cabinet to advise the Governor and the Legislature on programs to be funded from the tobacco money. The Legislature also created the Children's Initiatives Fund (CIF), which is administered by the Children's Cabinet, and statute requires annual transfers from the KEY Fund to the CIF of 102.5 percent of the amount transferred the previous year. Expenditures from the CIF are requested by the Children's Cabinet through the Kansas State Department of Education, recommended by the Governor, and approved by the Legislature.

[*Note:* Additional details regarding payments to Kansas under the MSA, the KEY Fund, and the CIF are available in the memorandum "Tobacco Settlement Update," available on

the KLRD website under the “Health and Social Services” policy area page.]

The requirement that NPMs put into escrow an amount of money equal to what they would pay under the settlement is intended to level the playing field so NPMs will not have a competitive advantage over participating manufacturers.

HB 2451 was introduced by the House Committee on Taxation at the request of Representative Adam Smith on behalf of Representative Patton.

House Committee on Judiciary

In the House Committee hearing on March 25, 2021, a representative of the Office of the Attorney General (OAG) testified as a **proponent**, stating the bill was needed as part of a negotiated agreement with other states and participating tobacco manufacturers to eliminate potential past liability regarding Kansas’ efforts to diligently enforce its MSA qualifying statute.

No other testimony was provided.

Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on HB 2451, the OAG states the amounts paid into escrow by NPMs over the past two years has ranged from \$7.5 million to \$9.1 million. While the general trend for such payments has gone up, the OAG states it is difficult to predict the fiscal effect of enactment of the bill, as some NPMs may choose to cease doing business in Kansas as a result. However, enactment of the bill could potentially increase revenue to the Kansas Endowment for Youth Fund by \$7.5 million to \$9.1 million each year beginning in FY 2023.

The Department of Revenue states if the equity fee is remitted to the Department administrative expenditures could increase by \$6,000 in FY 2023 for required changes to the agency accounting voucher system. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Tobacco Master Settlement Agreement; non-participating manufacturers; escrow; Kansas Endowment for Youth Fund