

52:4D-7.1 et. al.
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2014 **CHAPTER:** 85

NJSA: 52:4D-7.1 et. al. (Concerns certain tobacco sales)

BILL NO: A3926 (Substituted for S2630)

SPONSOR(S) Burzichelli and others

DATE INTRODUCED: December 4, 2014

COMMITTEE: **ASSEMBLY:** Appropriations
 SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 18, 2014
 SENATE: December 18, 2014

DATE OF APPROVAL: December 26, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

A3926

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
 SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S2630

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No
 SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"NJ May Take E-Cigs Other Tobacco," Jersey Journal, 12-16-14

"N.J. May Tax E-Cigs, Raise Taxes on Tobacco Products," South Jersey Times, 12-17-14

LAW/KR

P.L.2014, CHAPTER 85, *approved December 26, 2014*

Assembly, No. 3926 (*First Reprint*)

1 AN ACT concerning tobacco sales, amending P.L.1999, c.148 and
2 amending and supplementing P.L.2003, c.25.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1999, c.148 (C.52:4D-2) is amended to read
8 as follows:

9 2. As used in this act:

10 "Adjusted for inflation" means increased in accordance with the
11 formula for inflation adjustment set forth in Exhibit C to the Master
12 Settlement Agreement.

13 "Affiliate" means a person who directly or indirectly owns or
14 controls, is owned or controlled by, or is under common ownership
15 or control with, another person. Solely for purposes of this
16 definition, the term "owns," "is owned" and "ownership" mean
17 ownership of an equity interest, or the equivalent thereof, of 10% or
18 more, and the term "person" means an individual, partnership,
19 committee, association, corporation or any other organization or
20 group of persons.

21 "Allocable share" means allocable share as that term is defined in
22 the Master Settlement Agreement.

23 "Cigarette" means any product that contains nicotine, is intended
24 to be burned or heated under ordinary conditions of use, and
25 consists of or contains:

26 (1) any roll of tobacco wrapped in paper or in any substance not
27 containing tobacco; or

28 (2) tobacco, in any form, that is functional in the product,
29 which, because of its appearance, the type of tobacco used in the
30 filler, or its packaging and labeling, is likely to be offered to, or
31 purchased by, consumers as a cigarette; or

32 (3) any roll of tobacco wrapped in any substance containing
33 tobacco which, because of its appearance, the type of tobacco used
34 in the filler, or its packaging and labeling, is likely to be offered to,
35 or purchased by, consumers as a cigarette described in paragraph
36 (1) of this definition.

37 The term "cigarette" includes "roll-your-own," which means any
38 tobacco that, because of its appearance, type, packaging, or labeling
39 is suitable for use and likely to be offered to, or purchased by,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted December 15, 2014.

1 consumers as tobacco for making cigarettes. For purposes of this
2 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco
3 shall constitute one individual "cigarette."

4 "Master Settlement Agreement" means the settlement agreement,
5 and related documents, entered into on November 23, 1998 by the
6 State and leading United States tobacco product manufacturers.

7 "Qualified escrow fund" means an escrow arrangement with a
8 federally or State chartered financial institution having no
9 affiliation with any tobacco product manufacturer and having assets
10 of at least \$1,000,000,000 where such arrangement requires that
11 such financial institution hold the escrowed funds' principal for the
12 benefit of releasing parties and prohibits the tobacco product
13 manufacturer placing the funds into escrow from using, accessing or
14 directing the use of the funds' principal except as consistent with
15 paragraph (2) of subsection b. of section 3 of this act.

16 "Released claims" means released claims as that term is defined
17 in the Master Settlement Agreement.

18 "Releasing parties" means releasing parties as that term is
19 defined in the Master Settlement Agreement.

20 "Tobacco Product Manufacturer" means an entity that after the
21 date of enactment of this act directly, and not exclusively through
22 any affiliate:

23 (1) manufactures anywhere cigarettes that the manufacturer
24 intends to be sold in the United States, including cigarettes intended
25 to be sold in the United States through an importer; provided,
26 however, that an entity that manufactures cigarettes that it intends
27 to be sold in the United States shall not be considered to be a
28 tobacco product manufacturer under this paragraph (1) if (a) such
29 cigarettes are sold in the United States exclusively through an
30 importer that is an original participating manufacturer, as that term
31 is defined in the Master Settlement Agreement, that will be
32 responsible for the payments under the Master Settlement
33 Agreement with respect to such cigarettes as a result of the
34 provisions of subsection II(mm) of the Master Settlement
35 Agreement and that pays the taxes specified in subsection II(z) of
36 the Master Settlement Agreement, and (b) the manufacturer of such
37 cigarettes does not market or advertise such cigarettes in the United
38 States;

39 (2) is the first purchaser anywhere for resale in the United States
40 of cigarettes manufactured anywhere that the manufacturer does not
41 intend to be sold in the United States; or

42 (3) becomes a successor of an entity described in paragraph (1)
43 or (2) of this definition.

44 The term "tobacco product manufacturer" shall not include an
45 affiliate of a tobacco product manufacturer unless such affiliate
46 itself falls within any of paragraphs (1) through (3) of this
47 definition.

1 "Units sold" means the number of individual cigarettes on which
2 the State has the authority under federal law to impose excise or
3 similar taxes ¹, regardless of whether such taxes were imposed or
4 collected by the State, ¹ that were sold in the State by the applicable
5 tobacco product manufacturer, whether directly or through a
6 distributor, retailer or similar intermediary or intermediaries, during
7 the year in question¹, as measured by excise taxes collected by the
8 State on containers of "roll-your-own" tobacco, and on packs of
9 cigarettes bearing the excise tax stamp of the State¹. The State
10 Treasurer shall promulgate such regulations as are necessary to
11 ascertain the amount of State excise tax paid on the cigarettes of ¹,
12 and number of units sold by, ¹ such tobacco product manufacturer
13 for each year.

14 (cf: P.L.1999, c.148, s.2)

15

16 2. Section 6 of P.L.2003, c.25 (C.52:4D-9) is amended to read
17 as follows:

18 6. a. Any non-resident or foreign non-participating
19 manufacturer that has not registered to do business in this State as a
20 foreign corporation or business entity shall, as a condition precedent
21 to having its brand families listed or retained in the directory
22 established pursuant to section 4 of this act, appoint and continually
23 engage without interruption the services of an agent in New Jersey
24 to act as agent for the service of process on whom all process, and
25 any action or proceeding against it concerning or arising out of the
26 enforcement of the act and P.L.1999, c.148 (C.52:4D-1 et seq.),
27 may be served in any manner authorized by law. Such service shall
28 constitute legal and valid service of process on the non-participating
29 manufacturer. The non-participating manufacturer shall provide the
30 name, address, telephone number and proof of the appointment and
31 availability of such agent to the Attorney General.

32 b. A non-participating manufacturer shall provide notice to the
33 director and Attorney General not later than 30 calendar days prior
34 to termination of the authority of an agent and shall further provide
35 proof to the satisfaction of the Attorney General of the appointment
36 of a new agent no less than five calendar days prior to the
37 termination of an existing agent appointment. If an agent
38 terminates an agency appointment, the non-participating
39 manufacturer shall notify the director and Attorney General of that
40 termination within five calendar days and shall include proof to the
41 satisfaction of the Attorney General of the appointment of a new
42 agent.

43 c. A non-participating manufacturer whose products are sold in
44 this State, without appointing or designating an agent as herein
45 required shall be deemed to have appointed the Secretary of State as
46 that agent and may be proceeded against in the courts of this State
47 by service of process upon the Secretary of State; provided

1 however, that the appointment of the Secretary of State as that agent
2 shall not satisfy the condition precedent to having its brand families
3 listed or retained in the directory established pursuant to section 4
4 of **【this act】** P.L.2003, c.25 (c.52:4D-4 et seq.).

5 d. Any person who imports cigarettes ¹**【on behalf】**¹ of a
6 foreign non-participating manufacturer for sale in this State,
7 whether directly or through a distributor, retailer, or similar
8 intermediary or intermediaries, shall be jointly ¹and severally¹
9 responsible for any escrow deposit required by section 3 of
10 P.L.1999, c.148 (C.52:4D-3), to the extent that the non-participating
11 manufacturer failed to deposit the required escrow amount. Such
12 person shall also be subject to the provisions of subsections a. and
13 c. of section 8 of P.L.2003, c.25 (C.52:4D-11).
14 (cf: P.L.2003, c.25, s.6)
15

16 3. Section 7 of P.L.2003, c.25 (C.52:4D-10) is amended to read
17 as follows:

18 7. a. Within 20 days after the end of each calendar quarter, and
19 more frequently if so directed by the director, each licensed
20 distributor and each holder of a certificate of authority pursuant to
21 section 6 of P.L.1990, c.39 (C.54:40B-6) shall submit such
22 information as the director requires to facilitate compliance with
23 this section, including, but not limited to, a list by brand family of
24 the total number of cigarettes or in the case of roll your own, the
25 equivalent stick count, for which the licensed distributor affixed
26 stamps or impressed or attached metered impressions or for which
27 the holder of the certificate of authority otherwise paid the tax due
28 for such cigarettes during the previous calendar quarter. Each
29 licensed distributor and holder of a certificate of authority shall, for
30 a period of five years, maintain, and make available to the director
31 and the Attorney General, all invoices and documentation of sales
32 of all cigarettes sold by the licensed distributor or holder of a
33 certificate of authority that were manufactured by a non-
34 participating manufacturer and any other information relied upon in
35 reporting to the director.

36 b. The director is authorized to disclose to the Attorney
37 General any information received under **【this act】** P.L.2003,
38 c.25 (c.52:4D-4 et seq.) or requested by the Attorney General for
39 purposes of determining compliance with and enforcing the
40 provisions of **【this act】** P.L.2003, c.25 (c.52:4D-4 et seq.). The
41 director and Attorney General shall share with each other the
42 information received under **【this act】** P.L.2003, c.25 (c.52:4D-4 et
43 seq.), and may share such information with other federal, State or
44 local agencies only for purposes of enforcement of **【this act】**
45 P.L.2003, c.25 (c.52:4D-4 et seq.), P.L.1999, c.148 (C.52:4D-1 et
46 seq.), or the corresponding laws of other states, and with the data
47 clearinghouse or similar entity established pursuant to the

1 settlement ¹**【of accrued claims for the 2003 through 2014】** with
2 respect to the¹ non-participating manufacturer adjustment, as ¹such
3 adjustment is¹ described in the provisions of section IX(d) of the
4 Master Settlement Agreement.

5 c. The Attorney General may require at any time that a non-
6 participating manufacturer provide from the financial institution in
7 which the manufacturer has established a qualified escrow fund for
8 the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et
9 seq.), proof of the amount of money in the fund being held on
10 behalf of the State and the dates of deposits, and listing the amounts
11 of all withdrawals from the fund and the dates thereof.

12 d. In addition to the information required to be submitted
13 pursuant to this section, the director or Attorney General may
14 require a stamping agent, licensed distributor, holder of a certificate
15 of authority pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6),
16 or tobacco product manufacturer to submit any additional
17 information including, but not limited to, samples of the packaging
18 or labeling of each brand family, as is necessary to enable the
19 Attorney General to determine whether a tobacco product
20 manufacturer is in compliance with this act.

21 e. To promote compliance with the provisions of **【this act】**
22 P.L.2003, c.25 (c.52:4D-4 et seq.), the Attorney General may
23 promulgate regulations requiring a tobacco product manufacturer
24 subject to the requirements of paragraph (2) of subsection a. of
25 section 3 of **【this act】** P.L.2003, c.25 (C.52:4D-4 et seq.) to make
26 the escrow deposits required in more frequent installments during
27 the year in which the sales covered by the deposits are made. The
28 Attorney General may require production of information sufficient
29 to enable the Attorney General to determine the adequacy of the
30 amount of the installment deposit.

31 (cf: P.L.2003, c.25, s.7)

32

33 4. Section 8 of P.L.2003, c.25 (C.52:4D-11) is amended to read
34 as follows:

35 8. a. In addition to or in lieu of any other civil or criminal
36 remedy provided by law, upon a determination that any person has
37 violated section 5 of P.L. , c. (C.) (pending before the
38 Legislature as this bill) or section 5 of **【this act】** P.L.2003,
39 c.25 (C.52:4D-8) or subsection d. of section 6 of P.L.2003,
40 c.25 (C.52:4D-9) or any regulation adopted pursuant thereto, the
41 director may revoke or suspend the license of any person pursuant
42 to section 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend
43 the holder's certificate of authority pursuant to procedures
44 applicable to the suspension of a license set forth in section 203 of
45 P.L.1948, c.65 (C.54:40A-5). Each stamp or metered impression
46 affixed and each offer to sell cigarettes in violation of section 5 of
47 **【this act】** P.L.2003, c.25 (C.52:4D-8) shall constitute a separate

1 violation. For each violation hereof, the director may also impose a
2 civil penalty in an amount not to exceed the greater of 500% of the
3 retail value of the cigarettes sold or \$5,000 upon a determination of
4 violation of section 5 of **[this act]** P.L.2003, c.25 (C.52:4D-8) or
5 any regulations adopted pursuant thereto.

6 b. Any cigarettes that have been sold, offered for sale or
7 possessed for sale in this State in violation of section 5 of **[this act]**
8 P.L.2003, c.25 (C.52:4D-8) shall be deemed contraband, without
9 regard to whether the violation was knowing under section 607 of
10 P.L.1948, c. 65 (C.54:40A-30), and those cigarettes shall be subject
11 to seizure and forfeiture as provided in section 607, and all
12 cigarettes so seized and forfeited shall be destroyed and not resold.

13 c. The Attorney General, on behalf of the director, may seek an
14 injunction to restrain a threatened or actual violation of: section 5 of
15 P.L. c. (C.) (pending before the Legislature as this bill);
16 section 5 of [this act] P.L.2003, c.25 (C.52:4D-8); or subsection d.
17 of section 6 of P.L.2003, c.25 (C.52:4D-9); or subsection a. or
18 subsection b. of section 7 of [this act] P.L.2003, c.25 (C.52:4D-10)
19 by a licensed distributor or a holder of a certificate of authority
20 pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel
21 the licensed distributor or holder of a certificate of authority to
22 comply with the requirements provided therein. In any action
23 brought pursuant to this section, the State shall be entitled to
24 recover the costs of investigation, costs of the action and reasonable
25 attorney fees.

26 d. It shall be unlawful for any person to sell or distribute
27 cigarettes or acquire, hold, own, possess, transport, import, or cause
28 to be imported cigarettes that the person knows or should know are
29 intended for distribution or sale in the State in violation of section 5
30 of **[this act]** P.L.2003, c.25 (C.52:4D-8). A violation of this
31 subsection shall be a crime of the third degree.

32 (cf: P.L.2003, c.25, s.8)

33
34 5. (New section) A non-participating manufacturer ¹**[that is]**
35 shall¹ not ¹be¹ listed in the directory of manufacturers established
36 pursuant to section 4 of P.L.2003, c.25 (C.52:4D-7) ¹**[shall not be**
37 **included in the directory]** unless and¹ until it posts a bond for the
38 benefit of the State in the manner described herein:

39 a. The bond shall be posted by corporate surety ¹located within
40 the United States¹ in an amount equaling the greatest required
41 escrow due from the non-participating manufacturer or its
42 predecessor for any of the four preceding calendar years or \$25,000,
43 whichever amount is higher;

44 b. The bond shall be conditioned on the performance by the
45 non-participating manufacturer of all its duties and obligations
46 imposed by section 3 of P.L.1999, c.148 (C.52:4D-3), section 3 of

1 P.L.2003, c.25 (C.52:4D-6), section 5 of P.L.2003, c.25 (C.52:4D-
2 8) and section 6 of P.L.2003, c.25 (C.52:4D-9);

3 c. If a non-participating manufacturer that posted a bond has
4 failed to make or have made on its behalf deposits equal to the full
5 amount of escrow owed for a given year, within fifteen days
6 following the due date for the deposit the State may execute upon
7 the bond to recover any amount the non-participating manufacturer
8 failed to deposit into escrow, as well as civil penalties, the costs of
9 investigation, costs of the action and reasonable attorneys' fees
10 pursuant to subsections a. and c. of section 8 of P.L.2003,
11 c.25 (C.52:4D-11); and

12 d. ¹~~【The】~~ Beginning on April 30, 2015, the¹ bond shall be
13 posted ¹or updated¹ by ¹~~【April 15】~~ the end of each quarter¹ of each
14 calendar year as a condition to the inclusion of a non-participating
15 manufacturer and its brand families in the directory of
16 manufacturers ¹~~【for that year】~~ , and proof of the sufficiency of such
17 bond shall be submitted quarterly¹ .

18

19 6. This act shall take effect on January 1, 2015.

20

21

22

23

24 _____
Concerns certain tobacco sales.

ASSEMBLY, No. 3926

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 4, 2014

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman JOHN DIMAIO
District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Concerns certain tobacco sales.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/16/2014)

A3926 BURZICHELLI, DIMAIO

2

1 AN ACT concerning tobacco sales, amending P.L.1999, c.148 and
2 amending and supplementing P.L.2003, c.25.

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11 formula for inflation adjustment set forth in Exhibit C to the Master
12 Settlement Agreement.

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15 or control with, another person. Solely for purposes of this
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17 ownership of an equity interest, or the equivalent thereof, of 10% or
18 more, and the term "person" means an individual, partnership,
19 committee, association, corporation or any other organization or
20 group of persons.

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22 the Master Settlement Agreement.

23 "Cigarette" means any product that contains nicotine, is intended
24 to be burned or heated under ordinary conditions of use, and
25 consists of or contains:

26 (1) any roll of tobacco wrapped in paper or in any substance not
27 containing tobacco; or

28 (2) tobacco, in any form, that is functional in the product, which,
29 because of its appearance, the type of tobacco used in the filler, or
30 its packaging and labeling, is likely to be offered to, or purchased
31 by, consumers as a cigarette; or

32 (3) any roll of tobacco wrapped in any substance containing
33 tobacco which, because of its appearance, the type of tobacco used
34 in the filler, or its packaging and labeling, is likely to be offered to,
35 or purchased by, consumers as a cigarette described in paragraph
36 (1) of this definition.

37 The term "cigarette" includes "roll-your-own," which means any
38 tobacco that, because of its appearance, type, packaging, or labeling
39 is suitable for use and likely to be offered to, or purchased by,
40 consumers as tobacco for making cigarettes. For purposes of this
41 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco
42 shall constitute one individual "cigarette."

43 "Master Settlement Agreement" means the settlement agreement,
44 and related documents, entered into on November 23, 1998 by the
45 State and leading United States tobacco product manufacturers.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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2 federally or State chartered financial institution having no
3 affiliation with any tobacco product manufacturer and having assets
4 of at least \$1,000,000,000 where such arrangement requires that
5 such financial institution hold the escrowed funds' principal for the
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7 manufacturer placing the funds into escrow from using, accessing or
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11 in the Master Settlement Agreement.

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15 date of enactment of this act directly, and not exclusively through
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22 tobacco product manufacturer under this paragraph (1) if (a) such
23 cigarettes are sold in the United States exclusively through an
24 importer that is an original participating manufacturer, as that term
25 is defined in the Master Settlement Agreement, that will be
26 responsible for the payments under the Master Settlement
27 Agreement with respect to such cigarettes as a result of the
28 provisions of subsection II(mm) of the Master Settlement
29 Agreement and that pays the taxes specified in subsection II(z) of
30 the Master Settlement Agreement, and (b) the manufacturer of such
31 cigarettes does not market or advertise such cigarettes in the United
32 States;

33 (2) is the first purchaser anywhere for resale in the United States
34 of cigarettes manufactured anywhere that the manufacturer does not
35 intend to be sold in the United States; or

36 (3) becomes a successor of an entity described in paragraph (1)
37 or (2) of this definition.

38 The term "tobacco product manufacturer" shall not include an
39 affiliate of a tobacco product manufacturer unless such affiliate
40 itself falls within any of paragraphs (1) through (3) of this
41 definition.

42 "Units sold" means the number of individual cigarettes on which
43 the State has the authority under federal law to impose excise or
44 similar taxes that were sold in the State by the applicable tobacco
45 product manufacturer, whether directly or through a distributor,
46 retailer or similar intermediary or intermediaries, during the year in
47 question, as measured by excise taxes collected by the State on
48 containers of "roll-your-own" tobacco, and on packs of cigarettes

1 bearing the excise tax stamp of the State]. The State Treasurer shall
2 promulgate such regulations as are necessary to ascertain the
3 amount of State excise tax paid on the cigarettes of such tobacco
4 product manufacturer for each year.
5 (cf: P.L.1999, c.148, s.2)

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7 2. Section 6 of P.L.2003, c.25 (C.52:4D-9) is amended to read
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9 6. a. Any non-resident or foreign non-participating
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22 availability of such agent to the Attorney General.

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34 c. A non-participating manufacturer whose products are sold in
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36 required shall be deemed to have appointed the Secretary of State as
37 that agent and may be proceeded against in the courts of this State
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39 however, that the appointment of the Secretary of State as that agent
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2 provisions of subsections a. and c. of section 8 of P.L.2003, c.25
3 (C.52:4D-11).

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18 for such cigarettes during the previous calendar quarter. Each
19 licensed distributor and holder of a certificate of authority shall, for
20 a period of five years, maintain, and make available to the director
21 and the Attorney General, all invoices and documentation of sales
22 of all cigarettes sold by the licensed distributor or holder of a
23 certificate of authority that were manufactured by a non-
24 participating manufacturer and any other information relied upon in
25 reporting to the director.

26 b. The director is authorized to disclose to the Attorney
27 General any information received under **[this act]** P.L.2003, c.25
28 (c.52:4D-4 et seq.) or requested by the Attorney General for
29 purposes of determining compliance with and enforcing the
30 provisions of **[this act]** P.L.2003, c.25 (c.52:4D-4 et seq.). The
31 director and Attorney General shall share with each other the
32 information received under **[this act]** P.L.2003, c.25 (c.52:4D-4 et
33 seq.), and may share such information with other federal, State or
34 local agencies only for purposes of enforcement of **[this act]**
35 P.L.2003, c.25 (c.52:4D-4 et seq.), P.L.1999, c.148 (C.52:4D-1 et
36 seq.), or the corresponding laws of other states, and with the data
37 clearinghouse or similar entity established pursuant to the
38 settlement of accrued claims for the 2003 through 2014 non-
39 participating manufacturer adjustment, as described in the
40 provisions of section IX(d) of the Master Settlement Agreement.

41 c. The Attorney General may require at any time that a non-
42 participating manufacturer provide from the financial institution in
43 which the manufacturer has established a qualified escrow fund for
44 the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et
45 seq.), proof of the amount of money in the fund being held on
46 behalf of the State and the dates of deposits, and listing the amounts
47 of all withdrawals from the fund and the dates thereof.

1 d. In addition to the information required to be submitted
2 pursuant to this section, the director or Attorney General may
3 require a stamping agent, licensed distributor, holder of a certificate
4 of authority pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6),
5 or tobacco product manufacturer to submit any additional
6 information including, but not limited to, samples of the packaging
7 or labeling of each brand family, as is necessary to enable the
8 Attorney General to determine whether a tobacco product
9 manufacturer is in compliance with this act.

10 e. To promote compliance with the provisions of **[this act]**
11 P.L.2003, c.25 (c.52:4D-4 et seq.), the Attorney General may
12 promulgate regulations requiring a tobacco product manufacturer
13 subject to the requirements of paragraph (2) of subsection a. of
14 section 3 of **[this act]** P.L.2003, c.25 (C.52:4D-4 et seq.) to make
15 the escrow deposits required in more frequent installments during
16 the year in which the sales covered by the deposits are made. The
17 Attorney General may require production of information sufficient
18 to enable the Attorney General to determine the adequacy of the
19 amount of the installment deposit.

20 (cf: P.L.2003, c.25, s.7)

21

22 4. Section 8 of P.L.2003, c.25 (C.52:4D-11) is amended to read
23 as follows:

24 8. a. In addition to or in lieu of any other civil or criminal
25 remedy provided by law, upon a determination that any person has
26 violated section 5 of P.L. , c. (C.) (pending before the
27 Legislature as this bill) or section 5 of **[this act]** P.L.2003, c.25
28 (C.52:4D-8) or subsection d. of section 6 of P.L.2003, c.25
29 (C.52:4D-9) or any regulation adopted pursuant thereto, the director
30 may revoke or suspend the license of any person pursuant to section
31 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend the
32 holder's certificate of authority pursuant to procedures applicable to
33 the suspension of a license set forth in section 203 of P.L.1948, c.65
34 (C.54:40A-5). Each stamp or metered impression affixed and each
35 offer to sell cigarettes in violation of section 5 of **[this act]**
36 P.L.2003, c.25 (C.52:4D-8) shall constitute a separate violation.
37 For each violation hereof, the director may also impose a civil
38 penalty in an amount not to exceed the greater of 500% of the retail
39 value of the cigarettes sold or \$5,000 upon a determination of
40 violation of section 5 of **[this act]** P.L.2003, c.25 (C.52:4D-8) or
41 any regulations adopted pursuant thereto.

42 b. Any cigarettes that have been sold, offered for sale or
43 possessed for sale in this State in violation of section 5 of **[this act]**
44 P.L.2003, c.25 (C.52:4D-8) shall be deemed contraband, without
45 regard to whether the violation was knowing under section 607 of
46 P.L.1948, c. 65 (C.54:40A-30), and those cigarettes shall be subject

1 to seizure and forfeiture as provided in section 607, and all
2 cigarettes so seized and forfeited shall be destroyed and not resold.

3 c. The Attorney General, on behalf of the director, may seek an
4 injunction to restrain a threatened or actual violation of: section 5 of
5 P.L. c. (C.) (pending before the Legislature as this bill);
6 section 5 of [this act] P.L.2003, c.25 (C.52:4D-8); or subsection d.
7 of section 6 of P.L.2003, c.25 (C.52:4D-9); or subsection a. or
8 subsection b. of section 7 of [this act] P.L.2003, c.25 (C.52:4D-10)
9 by a licensed distributor or a holder of a certificate of authority
10 pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel
11 the licensed distributor or holder of a certificate of authority to
12 comply with the requirements provided therein. In any action
13 brought pursuant to this section, the State shall be entitled to
14 recover the costs of investigation, costs of the action and reasonable
15 attorney fees.

16 d. It shall be unlawful for any person to sell or distribute
17 cigarettes or acquire, hold, own, possess, transport, import, or cause
18 to be imported cigarettes that the person knows or should know are
19 intended for distribution or sale in the State in violation of section 5
20 of **[this act]** P.L.2003, c.25 (C.52:4D-8). A violation of this
21 subsection shall be a crime of the third degree.
22 (cf: P.L.2003, c.25, s.8)

23
24 5. (New section) A non-participating manufacturer that is not
25 listed in the directory of manufacturers established pursuant to
26 section 4 of P.L.2003, c.25 (C.52:4D-7) shall not be included in the
27 directory until it posts a bond for the benefit of the State in the
28 manner described herein:

29 a. The bond shall be posted by corporate surety in an amount
30 equaling the greatest required escrow due from the non-
31 participating manufacturer or its predecessor for any of the four
32 preceding calendar years or \$25,000, whichever amount is higher;

33 b. The bond shall be conditioned on the performance by the
34 non-participating manufacturer of all its duties and obligations
35 imposed by section 3 of P.L.1999, c.148 (C.52:4D-3), section 3 of
36 P.L.2003, c.25 (C.52:4D-6), section 5 of P.L.2003, c.25 (C.52:4D-
37 8) and section 6 of P.L.2003, c.25 (C.52:4D-9);

38 c. If a non-participating manufacturer that posted a bond has
39 failed to make or have made on its behalf deposits equal to the full
40 amount of escrow owed for a given year, within fifteen days
41 following the due date for the deposit the State may execute upon
42 the bond to recover any amount the non-participating manufacturer
43 failed to deposit into escrow, as well as civil penalties, the costs of
44 investigation, costs of the action and reasonable attorneys' fees
45 pursuant to subsections a. and c. of section 8 of P.L.2003, c.25
46 (C.52:4D-11); and

47 d. The bond shall be posted by April 15 of each calendar year
48 as a condition to the inclusion of a non-participating manufacturer

1 and its brand families in the directory of manufacturers for that
2 year.

3

4 6. This act shall take effect on January 1, 2015.

5

6

7

STATEMENT

8

9 This bill modifies the “Model Statute” enacted by New Jersey in
10 accordance with the “Master Settlement Agreement,” the national
11 tobacco settlement reached on November 23, 1998 between the
12 states’ attorneys general and the largest tobacco manufacturers. The
13 modifications are required as a result of the “NPM Settlement
14 Agreement” among 22 states, including New Jersey, and certain
15 manufacturers of tobacco products, affirmed in March 2013.

16 In 1998, New Jersey, along with 51 other settling states and
17 jurisdictions, entered into a Master Settlement Agreement (“MSA”)
18 with major tobacco manufacturers, after the states had sued tobacco
19 manufacturers to recover Medicaid and other health-related costs
20 incurred as a result of smoking. Among other things, the MSA
21 obligated the participating tobacco manufacturers to pay millions of
22 dollars to the states in settlement of these anticipated claims.
23 However, one of the ramifications of the MSA was that the
24 participating manufacturers’ settlement costs were likely to place
25 them at a competitive disadvantage when compared with the
26 tobacco manufacturers that chose not to participate in the MSA,
27 henceforth known as non-participating manufacturer(s), or
28 “NPM(s).” To counteract this result and remove a disincentive that
29 might prevent NPMs from joining the MSA, each settling state as
30 part of the MSA agreed to enact a “Model Statute” that would
31 compel each NPM to make payments into an escrow account in
32 amounts comparable to what it would have paid to the state had it
33 participated in the MSA. New Jersey passed its version of the
34 Model Statute as P.L.1999, c.148, (C.52:4D-1 et seq).

35 The MSA included a provision known as an “NPM adjustment,”
36 which was intended to ensure that each settling state would duly
37 enforce its Model Statute. The NPM adjustment would enable
38 participating manufacturers to reduce payments otherwise required
39 under the MSA if the participating manufacturer market share were
40 to decline by 2% or more, an independent economic consultant were
41 to conclude that the MSA significantly contributed to this decline,
42 and an arbitrator were to determine that a given state failed to
43 diligently enforce its Model Statute.

44 Following a determination of reduced market share and analysis
45 of the MSA’s impact on that decline, some participating
46 manufacturers reduced or withheld payments required under the
47 MSA, asserting an NPM adjustment based on an alleged failure by
48 numerous individual states to diligently enforce the Model Statute.

1 The dispute encompassed NPM adjustments for the period from
2 2003 through 2012. An arbitration panel was established and
3 eventually began conducting hearings. Consequently, several states
4 sought to negotiate toward a resolution with the tobacco industry.
5 In December 2012, twenty-two states, including New Jersey,
6 reached a settlement of their respective disputes with the
7 participating manufacturers. In March 2013, the arbitration panel
8 affirmed the NPM Settlement Agreement.

9 The NPM Settlement Agreement apportions withheld funds
10 between the manufacturers and the settling states and makes various
11 other changes to how future NPM adjustments will be calculated for
12 states that participate. As part of the settlement, the settling states
13 agreed to pursue two changes to their respective Model Statutes:

14 (1) amending the definition of “units sold” to include all NPM
15 cigarettes sold in the state, not just those that are taxed and bear
16 excise tax stamps; and

17 (2) sharing certain information with a “Data Clearinghouse” to
18 facilitate the tracking of NPM cigarettes.

19 This bill effectuates those changes to the Model Statute, as
20 contemplated by the NPM Settlement Agreement, by amending the
21 definition of “units sold” to include all NPM cigarettes sold in New
22 Jersey, and by authorizing the Division of Taxation to disclose
23 certain information to the Attorney General, to permit disclosure of
24 that information to the Data Clearinghouse as well.

25 In addition to the changes above, the bill effectuates the
26 following additional modifications to the Model Statute which are
27 intended to facilitate the State’s diligent enforcement of the Model
28 Statute, including requiring the posting of escrow bonds by certain
29 non-participating manufacturers, and requiring importers of foreign
30 NPM products to be joint and severally liable for taxes, escrow and
31 penalties.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3926

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2014

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3926, with committee amendments.

As amended, this bill modifies the “Model Statute” enacted by New Jersey in accordance with the “Master Settlement Agreement,” the national tobacco settlement reached in November 1998 between the states’ attorneys general and the largest tobacco manufacturers. The modifications are required as a result of the NPM (Non-Participating Manufacturers) Settlement Agreement among 22 states, including New Jersey, and certain manufacturers of tobacco products, affirmed in March 2013.

The NPM Settlement Agreement apportions withheld funds between the manufacturers and the settling states and makes other changes to how future NPM adjustments will be calculated for participating states. As part of the settlement, the settling states agreed to pursue two changes to their Model Statutes:

(1) amending the definition of “units sold” to include all NPM cigarettes sold in the state, regardless of whether they were taxed and bear excise tax stamps showing tax collection; and

(2) sharing certain information with a “Data Clearinghouse” to facilitate the tracking of NPM cigarettes.

This bill effectuates these changes to the Model Statute by amending the definition of “units sold” to include all NPM cigarettes sold in New Jersey, and by authorizing the Director of the Division of Taxation to disclose certain information to the Attorney General, to permit disclosure of that information to the Data Clearinghouse.

The bill makes certain other changes to the Model Statute to facilitate enforcement. These changes include requiring the posting and quarterly updating of escrow bonds by certain non-participating manufacturers, and requiring importers of foreign NPM products to be joint and severally liable for taxes, escrow, and penalties.

The bill takes effect on January 1, 2015.

FISCAL IMPACT:

The Office of Legislative Services estimates this bill to

likely produce a modest State revenue gain that for the foreseeable future is largely pledged to holders of the State's Tobacco Settlement Asset-Backed Bonds (Series 2007-1).

The bill aims to increase compliance by cigarette and roll-your-own tobacco producers that are not parties to the MSA ("non-participating manufacturers") with the agreement's requirement that "non-participating manufacturers" make escrow payments to states that on a per-unit basis roughly equal those payments that agreement signatories make directly to states. The bill specifically targets cigarette and roll-your-own tobacco sales by "non-participating manufacturers" that occur in violation of New Jersey's excise tax laws, such as tax-evading sales over the Internet or in tribal smoke shops. The extent to which the bill will result in additional revenues, however, is unclear, given the difficulties the State has experienced in extending its tax requirements to tax-evading sales.

Moreover, the amount to be realized by the State from the participation of currently non-participating manufacturers in the MSA will necessarily be limited as the State pledged 76.26 percent of its future MSA payment stream to bondholders through June 2041. Under a separate pledge agreement, it pledged the remaining 23.74 percent of its future MSA payment stream to holders of two bond classes starting in FY 2017 until the two bond classes are paid off, which is projected to occur in FY 2023.

COMMITTEE AMENDMENTS:

The amendments clarify certain terms used in the proposed modifications to the Model Statute to more closely follow the understanding of the terms of the arbitration agreement as reviewed by the representatives of the tobacco industry and the settling states Attorneys General.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3926

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: DECEMBER 22, 2014

SUMMARY

- Synopsis:** Concerns certain tobacco sales.
- Type of Impact:** Potential revenue gain to independent Tobacco Settlement Financing Corporation and State General Fund.
- Agencies Affected:** Department of the Treasury;
Tobacco Settlement Financing Corporation.

Office of Legislative Services Estimate

Fiscal Impact
Modest Annual State Revenue Gain — See comments below

- The Office of Legislative Services (OLS) projects this bill to likely produce a modest, annually recurring State revenue gain in the form of larger payments from cigarette and roll-your-own tobacco manufacturers that participate in the multi-state Master Settlement Agreement. But for the foreseeable future the revenue increase is largely pledged to holders of the State's Tobacco Settlement Asset-Backed Bonds (Series 2007-1).

BILL DESCRIPTION

Assembly Bill No. 3926 (1R) of 2014 revises the “Model Statute” that New Jersey enacted in 1999 as a signatory of the multi-state Master Settlement Agreement (MSA) with leading United States tobacco product manufacturers. The amendments are intended to solidify compliance with “Model Statute” provisions that pertain to cigarette and roll-your-own tobacco producers that are not parties to the MSA (“non-participating manufacturers”).

The MSA settled New Jersey's claims for relief with respect to the costs it had incurred from residents' cigarette smoking in the year of payment and earlier years. The agreement obliges the State to enact and enforce the “Model Statute” under which cigarette and roll-your-own tobacco manufacturers must either join the MSA or adhere to requirements applicable to “non-participating manufacturers.” Most notably, the latter must make escrow payments to New Jersey that on a per-unit basis approximate those payments that MSA participants make directly

to the State. Escrow account amounts serve as a potential funding source for any future judgment or settlement with the State. Cigarettes and roll-your-own tobacco produced by noncompliant “non-participating manufacturers” are deemed illegal contraband. But some “non-participating manufacturers” that are located outside of New Jersey’s jurisdiction have evaded their MSA-related New Jersey escrow payment obligations.

To enhance compliance therewith this bill broadens the State’s enforcement tools and responsibilities. Notably, it: a) makes importers for foreign “non-participating manufacturers” jointly and severally liable with the manufacturers for escrow fund deposits and related penalties; b) requires “non-participating manufacturers” to make escrow fund payments on cigarette and roll-your-own tobacco sales that evade New Jersey’s excise tax laws, such as Internet and tribal smoke shop sales; c) authorizes the sharing of taxpayer-confidential information with a national data clearinghouse to facilitate the tracking of “non-participating manufacturer” sales; and d) requires compliant “non-participating manufacturers” to post surety bonds quarterly with the State that the State may access if the principal fails to make good on payment obligations under the “Model Statute.”

FISCAL ANALYSIS

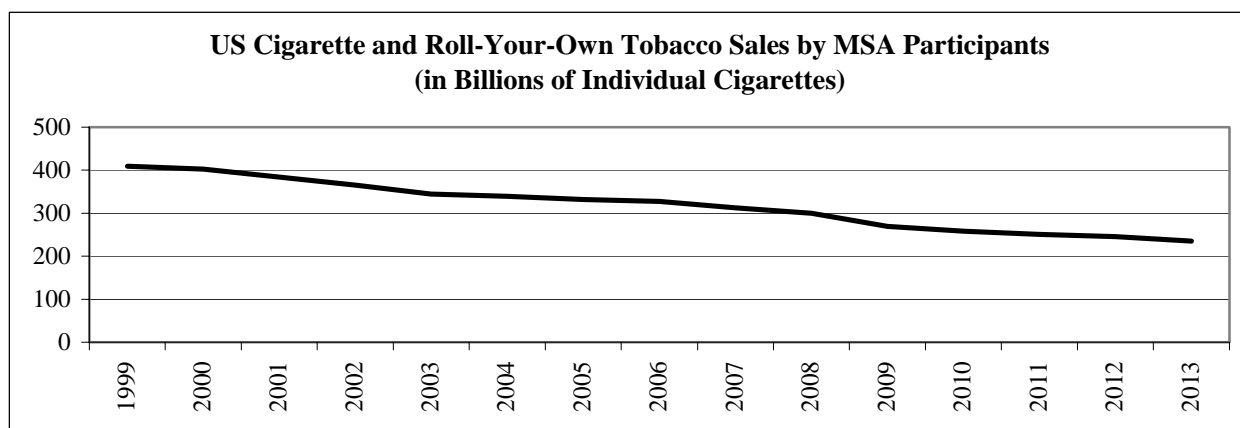
EXECUTIVE BRANCH

None received.

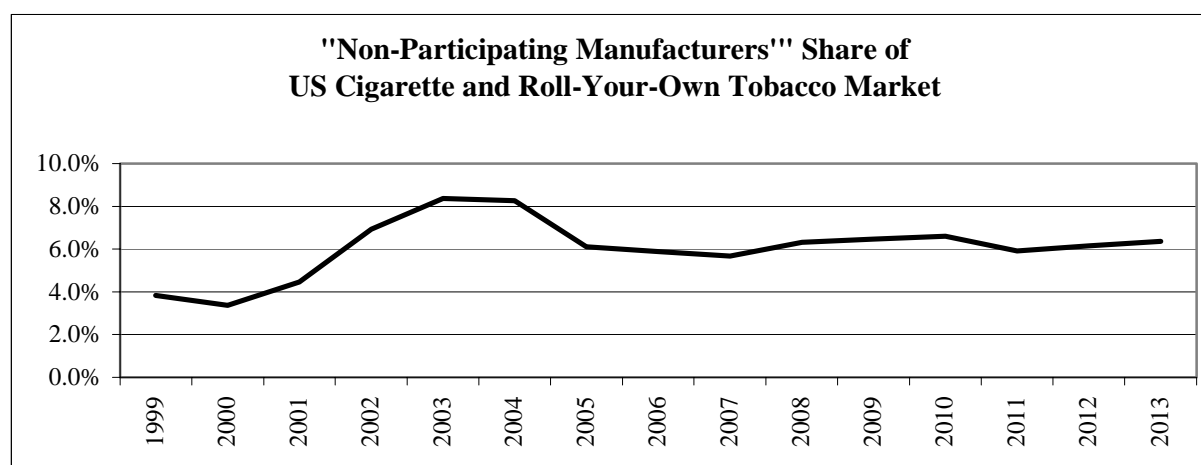
OFFICE OF LEGISLATIVE SERVICES

The OLS projects this bill to likely produce a modest, annually recurring State revenue gain in the form of larger payments from cigarette and roll-your-own tobacco manufacturers that participate in the multi-state MSA. But for the foreseeable future the increase is largely pledged to holders of the State’s Tobacco Settlement Asset-Backed Bonds (Series 2007-1).

Source of State Revenue Gain: The calculation of annual MSA payments by signatory cigarette and roll-your-own tobacco manufacturers considers several factors. Chief among them are MSA participants’ sales volume and market share. Payments to states decline if MSA participants’ sales fall or if MSA participants lose market share to “non-participating manufacturers” but only if the market share loss is attributable, at least in part, to states not “diligently enforcing” the “Model Statute.” New Jersey’s 2014 payment equaled \$204.3 million.



As the National Association of Attorneys General reports, MSA participants' nationwide cigarette and roll-your-own tobacco sales as well as market share have fallen since the MSA's inception, applying downward pressure on MSA payments to states. Notably, MSA participants' United States cigarette sales declined by 42.6 percent, or at an annualized 3.9 percent rate, from some 409.0 billion cigarettes sold in 1999 to some 234.8 billion sold in 2013. Likewise, participating manufacturers have relinquished market share to "non-participating manufacturers," although most of the loss occurred in the early years following the MSA's signing. Since 2005, the market share of "non-participating manufacturers" has hovered between 5.68 percent and 6.60 percent. (The numbers do not distinguish between "non-participating manufacturers" that comply with "Model Statute" requirements and those that do not.)



"Non-participating manufacturers" that evade their MSA-related New Jersey escrow payment obligations enjoy a competitive advantage over MSA participants and compliant "non-participating manufacturers," as the costs of their products do not include escrow payments to New Jersey that on a per-unit basis roughly equal those payments that agreement signatories make directly to states. The noncompliers' competitive advantage, in turn, favors sales of the noncompliers' contraband products at the expense of MSA participants. As a result, states receive lower MSA payments from MSA participants.

The bill seeks to remove the competitive advantage of currently noncompliant "non-participating manufacturers" by broadening the State's MSA-related enforcement tools and responsibilities. If successful, the bill will attenuate contraband cigarette and roll-your-own tobacco sales and narrow the price differential between cigarettes and roll-your-own tobacco produced by MSA participants and compliant "non-participating manufacturers" on the one side and noncompliant "non-participating manufacturers" on the other. Therefore, the bill will in effect shore up sales of MSA participants, and by extension New Jersey's MSA payment stream.

Size of State Revenue Gain: Although the OLS cannot quantify the increase in the State's annual MSA payments that is attributable to the legislation, the gain is likely to be modest for two reasons.

First, New Jersey's MSA payment is not calculated based on New Jersey cigarette sales. Instead, the State receives a fixed percentage of the annual total MSA payment that participating manufacturers make to all signatory states based on nationwide sales. Therefore, any increase in nationwide MSA payments that might result from this bill will be distributed among all signatory states and New Jersey will receive 3.87 percent thereof.

For example, if all estimated New Jersey sales of cigarettes and roll-your-own tobacco produced by "non-participating manufacturers" were converted into sales by MSA participants, New Jersey's annual gain would approximate \$250,000. This figure is based on the State's

estimated \$712 million in FY 2014 cigarette tax collections. At a tax rate of \$2.70 per pack of 20 cigarettes, this translates to the sale of about 263.6 million packs. If the proportion of sales of cigarettes produced by “non-participating manufacturers” relative to total cigarette sales is the same in New Jersey as in the nation as a whole, then “non-participating manufacturers” sold 16.8 million cigarette packs in New Jersey in FY 2014, or 335.3 million individual cigarettes. (The National Association of Attorneys General reports that 6.4 percent of cigarettes and roll-your-own tobacco sold in the United States in calendar year 2013 was produced by “non-participating manufacturers.”) At the MSA “non-participating manufacturers” escrow payment rate of \$0.019 per cigarette, these sales would grow annual nationwide MSA payments by \$6.4 million. New Jersey would receive 3.87 percent thereof, or about \$250,000. Of course, the bill’s revenue gain is likely to be smaller than that, given that the bill does not apply to all “non-participating manufacturers” but only to those that fail to comply with “Model Statute” escrow payment responsibilities.

Second, the bill presents significant enforcement challenges concerning “non-participating manufacturers” that shirk their escrow payment obligations, as New Jersey lacks jurisdiction over many of them. The State already experiences similar enforcement difficulties in seeking to collect its cigarette tax and tobacco products wholesale sales and use tax on cigarettes and roll-your-own tobacco sales that New Jersey residents make over the Internet or in tribal smoke shops. As a result, it is unclear to what extent this bill will reduce sales of cigarettes and roll-your-own tobacco produced by noncompliant “non-participating manufacturers” and what the ensuing impact thereof will be on MSA participants and their MSA payments to the states.

Allocation of State Revenue Gain: The State has securitized the majority of its MSA payment stream through FY 2041. Consequently, for the foreseeable future, State finances will only benefit from a portion of any larger MSA payment the State may receive because of the bill.

Specifically, the State pledged 76.26 percent of its MSA payments through June 2041 for principal and interest payments on its Tobacco Settlement Asset-Backed Bonds (Series 2007-1). Under a separate pledge agreement, it allocated the remaining 23.74 percent of its MSA payments to holders of two bond classes starting in FY 2017 until the bond classes are paid off, which is projected to occur in FY 2023.

Therefore, if this bill produces a State revenue gain, the State General Fund will receive 23.74 percent of the FY 2016 gain, no part of the gain from FY 2017 through FY 2022, some part less than 23.74 percent of the FY 2023 gain, 23.74 percent of the annual gain from FY 2024 through FY 2041, and all of the annual gain starting in FY 2042.

Section: Revenue, Finance and Appropriations
Analyst: Thomas Koenig
Lead Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2630

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED DECEMBER 8, 2014

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)

SYNOPSIS

Concerns certain tobacco sales.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning tobacco sales, amending P.L.1999, c.148 and
2 amending and supplementing P.L.2003, c.25.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1999, c.148 (C.52:4D-2) is amended to read
8 as follows:

9 2. As used in this act:

10 "Adjusted for inflation" means increased in accordance with the
11 formula for inflation adjustment set forth in Exhibit C to the Master
12 Settlement Agreement.

13 "Affiliate" means a person who directly or indirectly owns or
14 controls, is owned or controlled by, or is under common ownership
15 or control with, another person. Solely for purposes of this
16 definition, the term "owns," "is owned" and "ownership" mean
17 ownership of an equity interest, or the equivalent thereof, of 10% or
18 more, and the term "person" means an individual, partnership,
19 committee, association, corporation or any other organization or
20 group of persons.

21 "Allocable share" means allocable share as that term is defined in
22 the Master Settlement Agreement.

23 "Cigarette" means any product that contains nicotine, is intended
24 to be burned or heated under ordinary conditions of use, and
25 consists of or contains:

26 (1) any roll of tobacco wrapped in paper or in any substance not
27 containing tobacco; or

28 (2) tobacco, in any form, that is functional in the product, which,
29 because of its appearance, the type of tobacco used in the filler, or
30 its packaging and labeling, is likely to be offered to, or purchased
31 by, consumers as a cigarette; or

32 (3) any roll of tobacco wrapped in any substance containing
33 tobacco which, because of its appearance, the type of tobacco used
34 in the filler, or its packaging and labeling, is likely to be offered to,
35 or purchased by, consumers as a cigarette described in paragraph
36 (1) of this definition.

37 The term "cigarette" includes "roll-your-own," which means any
38 tobacco that, because of its appearance, type, packaging, or labeling
39 is suitable for use and likely to be offered to, or purchased by,
40 consumers as tobacco for making cigarettes. For purposes of this
41 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco
42 shall constitute one individual "cigarette."

43 "Master Settlement Agreement" means the settlement agreement,
44 and related documents, entered into on November 23, 1998 by the
45 State and leading United States tobacco product manufacturers.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Qualified escrow fund" means an escrow arrangement with a
2 federally or State chartered financial institution having no
3 affiliation with any tobacco product manufacturer and having assets
4 of at least \$1,000,000,000 where such arrangement requires that
5 such financial institution hold the escrowed funds' principal for the
6 benefit of releasing parties and prohibits the tobacco product
7 manufacturer placing the funds into escrow from using, accessing or
8 directing the use of the funds' principal except as consistent with
9 paragraph (2) of subsection b. of section 3 of this act.

10 "Released claims" means released claims as that term is defined
11 in the Master Settlement Agreement.

12 "Releasing parties" means releasing parties as that term is
13 defined in the Master Settlement Agreement.

14 "Tobacco Product Manufacturer" means an entity that after the
15 date of enactment of this act directly, and not exclusively through
16 any affiliate:

17 (1) manufactures anywhere cigarettes that the manufacturer
18 intends to be sold in the United States, including cigarettes intended
19 to be sold in the United States through an importer; provided,
20 however, that an entity that manufactures cigarettes that it intends
21 to be sold in the United States shall not be considered to be a
22 tobacco product manufacturer under this paragraph (1) if (a) such
23 cigarettes are sold in the United States exclusively through an
24 importer that is an original participating manufacturer, as that term
25 is defined in the Master Settlement Agreement, that will be
26 responsible for the payments under the Master Settlement
27 Agreement with respect to such cigarettes as a result of the
28 provisions of subsection II(mm) of the Master Settlement
29 Agreement and that pays the taxes specified in subsection II(z) of
30 the Master Settlement Agreement, and (b) the manufacturer of such
31 cigarettes does not market or advertise such cigarettes in the United
32 States;

33 (2) is the first purchaser anywhere for resale in the United States
34 of cigarettes manufactured anywhere that the manufacturer does not
35 intend to be sold in the United States; or

36 (3) becomes a successor of an entity described in paragraph (1)
37 or (2) of this definition.

38 The term "tobacco product manufacturer" shall not include an
39 affiliate of a tobacco product manufacturer unless such affiliate
40 itself falls within any of paragraphs (1) through (3) of this
41 definition.

42 "Units sold" means the number of individual cigarettes on which
43 the State has the authority under federal law to impose excise or
44 similar taxes that were sold in the State by the applicable tobacco
45 product manufacturer, whether directly or through a distributor,
46 retailer or similar intermediary or intermediaries, during the year in
47 question, as measured by excise taxes collected by the State on
48 containers of "roll-your-own" tobacco, and on packs of cigarettes

1 bearing the excise tax stamp of the State]. The State Treasurer shall
2 promulgate such regulations as are necessary to ascertain the
3 amount of State excise tax paid on the cigarettes of such tobacco
4 product manufacturer for each year.
5 (cf: P.L.1999, c.148, s.2)

6
7 2. Section 6 of P.L.2003, c.25 (C.52:4D-9) is amended to read
8 as follows:

9 6. a. Any non-resident or foreign non-participating
10 manufacturer that has not registered to do business in this State as a
11 foreign corporation or business entity shall, as a condition precedent
12 to having its brand families listed or retained in the directory
13 established pursuant to section 4 of this act, appoint and continually
14 engage without interruption the services of an agent in New Jersey
15 to act as agent for the service of process on whom all process, and
16 any action or proceeding against it concerning or arising out of the
17 enforcement of the act and P.L.1999, c.148 (C.52:4D-1 et seq.),
18 may be served in any manner authorized by law. Such service shall
19 constitute legal and valid service of process on the non-participating
20 manufacturer. The non-participating manufacturer shall provide the
21 name, address, telephone number and proof of the appointment and
22 availability of such agent to the Attorney General.

23 b. A non-participating manufacturer shall provide notice to the
24 director and Attorney General not later than 30 calendar days prior
25 to termination of the authority of an agent and shall further provide
26 proof to the satisfaction of the Attorney General of the appointment
27 of a new agent no less than five calendar days prior to the
28 termination of an existing agent appointment. If an agent
29 terminates an agency appointment, the non-participating
30 manufacturer shall notify the director and Attorney General of that
31 termination within five calendar days and shall include proof to the
32 satisfaction of the Attorney General of the appointment of a new
33 agent.

34 c. A non-participating manufacturer whose products are sold in
35 this State, without appointing or designating an agent as herein
36 required shall be deemed to have appointed the Secretary of State as
37 that agent and may be proceeded against in the courts of this State
38 by service of process upon the Secretary of State; provided
39 however, that the appointment of the Secretary of State as that agent
40 shall not satisfy the condition precedent to having its brand families
41 listed or retained in the directory established pursuant to section 4
42 of [this act] P.L.2003, c.25 (c.52:4D-4 et seq.).

43 d. Any person who imports cigarettes on behalf of a foreign
44 non-participating manufacturer for sale in this State, whether
45 directly or through a distributor, retailer, or similar intermediary or
46 intermediaries, shall be jointly responsible for any escrow deposit
47 required by section 3 of P.L.1999, c.148 (C.52:4D-3), to the extent
48 that the non-participating manufacturer failed to deposit the

1 required escrow amount. Such person shall also be subject to the
2 provisions of subsections a. and c. of section 8 of P.L.2003, c.25
3 (C.52:4D-11).

4 (cf: P.L.2003, c.25, s.6)

5

6 3. Section 7 of P.L.2003, c.25 (C.52:4D-10) is amended to read
7 as follows:

8 7. a. Within 20 days after the end of each calendar quarter, and
9 more frequently if so directed by the director, each licensed
10 distributor and each holder of a certificate of authority pursuant to
11 section 6 of P.L.1990, c.39 (C.54:40B-6) shall submit such
12 information as the director requires to facilitate compliance with
13 this section, including, but not limited to, a list by brand family of
14 the total number of cigarettes or in the case of roll your own, the
15 equivalent stick count, for which the licensed distributor affixed
16 stamps or impressed or attached metered impressions or for which
17 the holder of the certificate of authority otherwise paid the tax due
18 for such cigarettes during the previous calendar quarter. Each
19 licensed distributor and holder of a certificate of authority shall, for
20 a period of five years, maintain, and make available to the director
21 and the Attorney General, all invoices and documentation of sales
22 of all cigarettes sold by the licensed distributor or holder of a
23 certificate of authority that were manufactured by a non-
24 participating manufacturer and any other information relied upon in
25 reporting to the director.

26 b. The director is authorized to disclose to the Attorney
27 General any information received under **[this act]** P.L.2003, c.25
28 (c.52:4D-4 et seq.) or requested by the Attorney General for
29 purposes of determining compliance with and enforcing the
30 provisions of **[this act]** P.L.2003, c.25 (c.52:4D-4 et seq.). The
31 director and Attorney General shall share with each other the
32 information received under **[this act]** P.L.2003, c.25 (c.52:4D-4 et
33 seq.), and may share such information with other federal, State or
34 local agencies only for purposes of enforcement of **[this act]**
35 P.L.2003, c.25 (c.52:4D-4 et seq.), P.L.1999, c.148 (C.52:4D-1 et
36 seq.), or the corresponding laws of other states, and with the data
37 clearinghouse or similar entity established pursuant to the
38 settlement of accrued claims for the 2003 through 2014 non-
39 participating manufacturer adjustment, as described in the
40 provisions of section IX(d) of the Master Settlement Agreement.

41 c. The Attorney General may require at any time that a non-
42 participating manufacturer provide from the financial institution in
43 which the manufacturer has established a qualified escrow fund for
44 the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et
45 seq.), proof of the amount of money in the fund being held on
46 behalf of the State and the dates of deposits, and listing the amounts
47 of all withdrawals from the fund and the dates thereof.

1 d. In addition to the information required to be submitted
2 pursuant to this section, the director or Attorney General may
3 require a stamping agent, licensed distributor, holder of a certificate
4 of authority pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6),
5 or tobacco product manufacturer to submit any additional
6 information including, but not limited to, samples of the packaging
7 or labeling of each brand family, as is necessary to enable the
8 Attorney General to determine whether a tobacco product
9 manufacturer is in compliance with this act.

10 e. To promote compliance with the provisions of **[this act]**
11 P.L.2003, c.25 (c.52:4D-4 et seq.), the Attorney General may
12 promulgate regulations requiring a tobacco product manufacturer
13 subject to the requirements of paragraph (2) of subsection a. of
14 section 3 of **[this act]** P.L.2003, c.25 (C.52:4D-4 et seq.) to make
15 the escrow deposits required in more frequent installments during
16 the year in which the sales covered by the deposits are made. The
17 Attorney General may require production of information sufficient
18 to enable the Attorney General to determine the adequacy of the
19 amount of the installment deposit.

20 (cf: P.L.2003, c.25, s.7)

21
22 4. Section 8 of P.L.2003, c.25 (C.52:4D-11) is amended to read
23 as follows:

24 8. a. In addition to or in lieu of any other civil or criminal
25 remedy provided by law, upon a determination that any person has
26 violated section 5 of P.L. , c. (C.) (pending before the
27 Legislature as this bill) or section 5 of **[this act]** P.L.2003, c.25
28 (C.52:4D-8) or subsection d. of section 6 of P.L.2003, c.25
29 (C.52:4D-9) or any regulation adopted pursuant thereto, the director
30 may revoke or suspend the license of any person pursuant to section
31 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend the
32 holder's certificate of authority pursuant to procedures applicable to
33 the suspension of a license set forth in section 203 of P.L.1948, c.65
34 (C.54:40A-5). Each stamp or metered impression affixed and each
35 offer to sell cigarettes in violation of section 5 of **[this act]**
36 P.L.2003, c.25 (C.52:4D-8) shall constitute a separate violation.
37 For each violation hereof, the director may also impose a civil
38 penalty in an amount not to exceed the greater of 500% of the retail
39 value of the cigarettes sold or \$5,000 upon a determination of
40 violation of section 5 of **[this act]** P.L.2003, c.25 (C.52:4D-8) or
41 any regulations adopted pursuant thereto.

42 b. Any cigarettes that have been sold, offered for sale or
43 possessed for sale in this State in violation of section 5 of **[this act]**
44 P.L.2003, c.25 (C.52:4D-8) shall be deemed contraband, without
45 regard to whether the violation was knowing under section 607 of
46 P.L.1948, c. 65 (C.54:40A-30), and those cigarettes shall be subject

1 to seizure and forfeiture as provided in section 607, and all
2 cigarettes so seized and forfeited shall be destroyed and not resold.

3 c. The Attorney General, on behalf of the director, may seek an
4 injunction to restrain a threatened or actual violation of: section 5 of
5 P.L. c. (C.) (pending before the Legislature as this bill);
6 section 5 of [this act] P.L.2003, c.25 (C.52:4D-8); or subsection d.
7 of section 6 of P.L.2003, c.25 (C.52:4D-9); or subsection a. or
8 subsection b. of section 7 of [this act] P.L.2003, c.25 (C.52:4D-10)
9 by a licensed distributor or a holder of a certificate of authority
10 pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel
11 the licensed distributor or holder of a certificate of authority to
12 comply with the requirements provided therein. In any action
13 brought pursuant to this section, the State shall be entitled to
14 recover the costs of investigation, costs of the action and reasonable
15 attorney fees.

16 d. It shall be unlawful for any person to sell or distribute
17 cigarettes or acquire, hold, own, possess, transport, import, or cause
18 to be imported cigarettes that the person knows or should know are
19 intended for distribution or sale in the State in violation of section 5
20 of [this act] P.L.2003, c.25 (C.52:4D-8). A violation of this
21 subsection shall be a crime of the third degree.
22 (cf: P.L.2003, c.25, s.8)

23
24 5. (New section) A non-participating manufacturer that is not
25 listed in the directory of manufacturers established pursuant to
26 section 4 of P.L.2003, c.25 (C.52:4D-7) shall not be included in the
27 directory until it posts a bond for the benefit of the State in the
28 manner described herein:

29 a. The bond shall be posted by corporate surety in an amount
30 equaling the greatest required escrow due from the non-
31 participating manufacturer or its predecessor for any of the four
32 preceding calendar years or \$25,000, whichever amount is higher;

33 b. The bond shall be conditioned on the performance by the
34 non-participating manufacturer of all its duties and obligations
35 imposed by section 3 of P.L.1999, c.148 (C.52:4D-3), section 3 of
36 P.L.2003, c.25 (C.52:4D-6), section 5 of P.L.2003, c.25 (C.52:4D-
37 8) and section 6 of P.L.2003, c.25 (C.52:4D-9);

38 c. If a non-participating manufacturer that posted a bond has
39 failed to make or have made on its behalf deposits equal to the full
40 amount of escrow owed for a given year, within fifteen days
41 following the due date for the deposit the State may execute upon
42 the bond to recover any amount the non-participating manufacturer
43 failed to deposit into escrow, as well as civil penalties, the costs of
44 investigation, costs of the action and reasonable attorneys' fees
45 pursuant to subsections a. and c. of section 8 of P.L.2003, c.25
46 (C.52:4D-11); and

47 d. The bond shall be posted by April 15 of each calendar year
48 as a condition to the inclusion of a non-participating manufacturer

1 and its brand families in the directory of manufacturers for that
2 year.

3

4 6. This act shall take effect on January 1, 2015.

5

6

7

STATEMENT

8

9 This bill modifies the “Model Statute” enacted by New Jersey in
10 accordance with the “Master Settlement Agreement,” the national
11 tobacco settlement reached on November 23, 1998 between the
12 states’ attorneys general and the largest tobacco manufacturers. The
13 modifications are required as a result of the “NPM Settlement
14 Agreement” among 22 states, including New Jersey, and certain
15 manufacturers of tobacco products, affirmed in March 2013.

16 In 1998, New Jersey, along with 51 other settling states and
17 jurisdictions, entered into a Master Settlement Agreement (“MSA”)
18 with major tobacco manufacturers, after the states had sued tobacco
19 manufacturers to recover Medicaid and other health-related costs
20 incurred as a result of smoking. Among other things, the MSA
21 obligated the participating tobacco manufacturers to pay millions of
22 dollars to the states in settlement of these anticipated claims.
23 However, one of the ramifications of the MSA was that the
24 participating manufacturers’ settlement costs were likely to place
25 them at a competitive disadvantage when compared with the
26 tobacco manufacturers that chose not to participate in the MSA,
27 henceforth known as non-participating manufacturer(s), or
28 “NPM(s).” To counteract this result and remove a disincentive that
29 might prevent NPMs from joining the MSA, each settling state as
30 part of the MSA agreed to enact a “Model Statute” that would
31 compel each NPM to make payments into an escrow account in
32 amounts comparable to what it would have paid to the state had it
33 participated in the MSA. New Jersey passed its version of the
34 Model Statute as P.L.1999, c.148, (C.52:4D-1 et seq).

35 The MSA included a provision known as an “NPM adjustment,”
36 which was intended to ensure that each settling state would duly
37 enforce its Model Statute. The NPM adjustment would enable
38 participating manufacturers to reduce payments otherwise required
39 under the MSA if the participating manufacturer market share were
40 to decline by 2% or more, an independent economic consultant were
41 to conclude that the MSA significantly contributed to this decline,
42 and an arbitrator were to determine that a given state failed to
43 diligently enforce its Model Statute.

44 Following a determination of reduced market share and analysis
45 of the MSA’s impact on that decline, some participating
46 manufacturers reduced or withheld payments required under the
47 MSA, asserting an NPM adjustment based on an alleged failure by
48 numerous individual states to diligently enforce the Model Statute.

1 The dispute encompassed NPM adjustments for the period from
2 2003 through 2012. An arbitration panel was established and
3 eventually began conducting hearings. Consequently, several states
4 sought to negotiate toward a resolution with the tobacco industry. In
5 December 2012, twenty-two states, including New Jersey, reached a
6 settlement of their respective disputes with the participating
7 manufacturers. In March 2013, the arbitration panel affirmed the
8 NPM Settlement Agreement.

9 The NPM Settlement Agreement apportions withheld funds
10 between the manufacturers and the settling states and makes various
11 other changes to how future NPM adjustments will be calculated for
12 states that participate. As part of the settlement, the settling states
13 agreed to pursue two changes to their respective Model Statutes:

14 (1) amending the definition of “units sold” to include all NPM
15 cigarettes sold in the state, not just those that are taxed and bear
16 excise tax stamps; and

17 (2) sharing certain information with a “Data Clearinghouse” to
18 facilitate the tracking of NPM cigarettes.

19 This bill effectuates those changes to the Model Statute, as
20 contemplated by the NPM Settlement Agreement, by amending the
21 definition of “units sold” to include all NPM cigarettes sold in New
22 Jersey, and by authorizing the Division of Taxation to disclose
23 certain information to the Attorney General, to permit disclosure of
24 that information to the Data Clearinghouse as well.

25 In addition to the changes above, the bill effectuates the
26 following additional modifications to the Model Statute which are
27 intended to facilitate the State’s diligent enforcement of the Model
28 Statute, including requiring the posting of escrow bonds by certain
29 non-participating manufacturers, and requiring importers of foreign
30 NPM products to be joint and severally liable for taxes, escrow and
31 penalties.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2630

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2014

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2630, with committee amendments.

As amended, the bill modifies the “Model Statute” enacted by New Jersey in accordance with the “Master Settlement Agreement,” the national tobacco settlement reached in November 1998 between the states’ attorneys general and the largest tobacco manufacturers. The modifications are required as a result of the NPM (Non-Participating Manufacturers) Settlement Agreement among 22 states, including New Jersey, and certain manufacturers of tobacco products, affirmed in March 2013.

The NPM Settlement Agreement apportions withheld funds between the manufacturers and the settling states and makes other changes to how future NPM adjustments will be calculated for participating states. As part of the settlement, the settling states agreed to pursue two changes to their Model Statutes:

(1) amending the definition of “units sold” to include all NPM cigarettes sold in the state, regardless of whether they were taxed and bear excise tax stamps showing tax collection; and

(2) sharing certain information with a “Data Clearinghouse” to facilitate the tracking of NPM cigarettes.

This bill effectuates these changes to the Model Statute by amending the definition of “units sold” to include all NPM cigarettes sold in New Jersey, and by authorizing the Director of the Division of Taxation to disclose certain information to the Attorney General, to permit disclosure of that information to the Data Clearinghouse.

The bill makes certain other changes to the Model Statute to facilitate enforcement. These changes include requiring the posting and quarterly updating of escrow bonds by certain non-participating manufacturers, and requiring importers of foreign NPM products to be joint and severally liable for taxes, escrow, and penalties.

The bill takes effect on January 1, 2015.

COMMITTEE AMENDMENTS:

The committee amendments clarify certain terms used in the proposed modifications to the Model Statute to more closely follow the understanding of the terms of the arbitration agreement as reviewed by the representatives of the tobacco industry and the settling states Attorneys General.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates this bill to likely produce a modest State revenue gain that for the foreseeable future is largely pledged to holders of the State's Tobacco Settlement Asset-Backed Bonds (Series 2007-1).

The legislation aims to increase compliance by cigarette and roll-your-own tobacco producers that are not parties to the MSA ("non-participating manufacturers") with the agreement's requirement that "non-participating manufacturers" make escrow payments to states that on a per-unit basis roughly equal those payments that agreement signatories make directly to states. The bill specifically targets cigarette and roll-your-own tobacco sales by "non-participating manufacturers" that occur in violation of New Jersey's excise tax laws, such as tax-evading sales over the Internet or in tribal smoke shops. The extent to which the bill will result in additional revenues, however, is unclear, given the difficulties the State has experienced in extending its tax requirements to tax-evading sales.

Moreover, the amount to be realized by the State from the participation of currently non-participating manufacturers in the MSA will necessarily be limited as the State has pledged 76.26 percent of its future MSA payment stream to bondholders through June 2041. Under a separate pledge agreement, it pledged the remaining 23.74 percent of its future MSA payment stream to holders of two bond classes starting in FY 2017 until the two bond classes are paid off, which is projected to occur in FY 2023.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2630

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: DECEMBER 22, 2014

SUMMARY

- Synopsis:** Concerns certain tobacco sales.
- Type of Impact:** Potential revenue gain to independent Tobacco Settlement Financing Corporation and State General Fund.
- Agencies Affected:** Department of the Treasury;
Tobacco Settlement Financing Corporation.

Office of Legislative Services Estimate

Fiscal Impact
Modest Annual State Revenue Gain — See comments below

- The Office of Legislative Services (OLS) projects this bill to likely produce a modest, annually recurring State revenue gain in the form of larger payments from cigarette and roll-your-own tobacco manufacturers that participate in the multi-state Master Settlement Agreement. But for the foreseeable future the revenue increase is largely pledged to holders of the State’s Tobacco Settlement Asset-Backed Bonds (Series 2007-1).

BILL DESCRIPTION

Senate Bill No. 2630 (1R) of 2014 revises the “Model Statute” that New Jersey enacted in 1999 as a signatory of the multi-state Master Settlement Agreement (MSA) with leading United States tobacco product manufacturers. The amendments are intended to solidify compliance with “Model Statute” provisions that pertain to cigarette and roll-your-own tobacco producers that are not parties to the MSA (“non-participating manufacturers”).

The MSA settled New Jersey’s claims for relief with respect to the costs it had incurred from residents’ cigarette smoking in the year of payment and earlier years. The agreement obliges the State to enact and enforce the “Model Statute” under which cigarette and roll-your-own tobacco manufacturers must either join the MSA or adhere to requirements applicable to “non-participating manufacturers.” Most notably, the latter must make escrow payments to New Jersey that on a per-unit basis approximate those payments that MSA participants make directly

to the State. Escrow account amounts serve as a potential funding source for any future judgment or settlement with the State. Cigarettes and roll-your-own tobacco produced by noncompliant “non-participating manufacturers” are deemed illegal contraband. But some “non-participating manufacturers” that are located outside of New Jersey’s jurisdiction have evaded their MSA-related New Jersey escrow payment obligations.

To enhance compliance therewith this bill broadens the State’s enforcement tools and responsibilities. Notably, it: a) makes importers for foreign “non-participating manufacturers” jointly and severally liable with the manufacturers for escrow fund deposits and related penalties; b) requires “non-participating manufacturers” to make escrow fund payments on cigarette and roll-your-own tobacco sales that evade New Jersey’s excise tax laws, such as Internet and tribal smoke shop sales; c) authorizes the sharing of taxpayer-confidential information with a national data clearinghouse to facilitate the tracking of “non-participating manufacturer” sales; and d) requires compliant “non-participating manufacturers” to post surety bonds quarterly with the State that the State may access if the principal fails to make good on payment obligations under the “Model Statute.”

FISCAL ANALYSIS

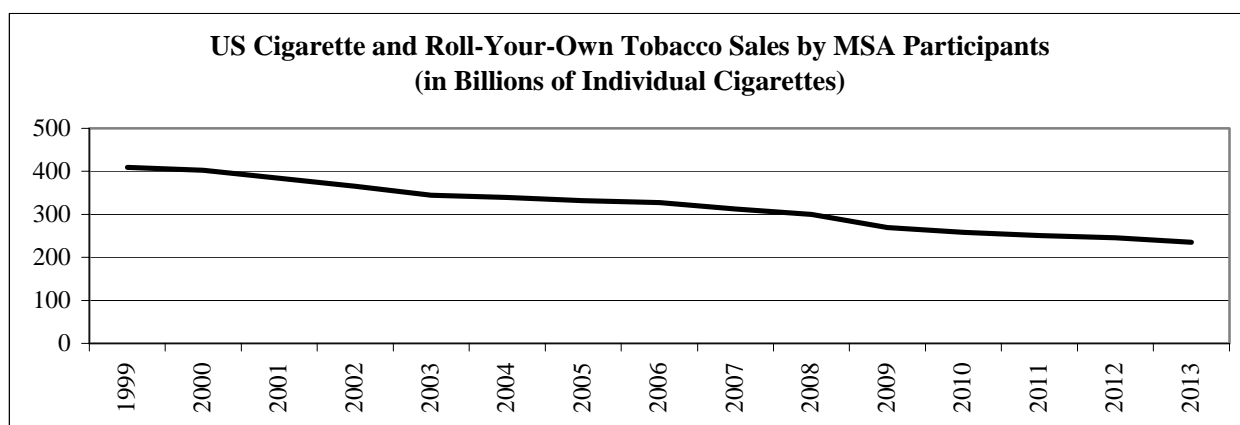
EXECUTIVE BRANCH

None received.

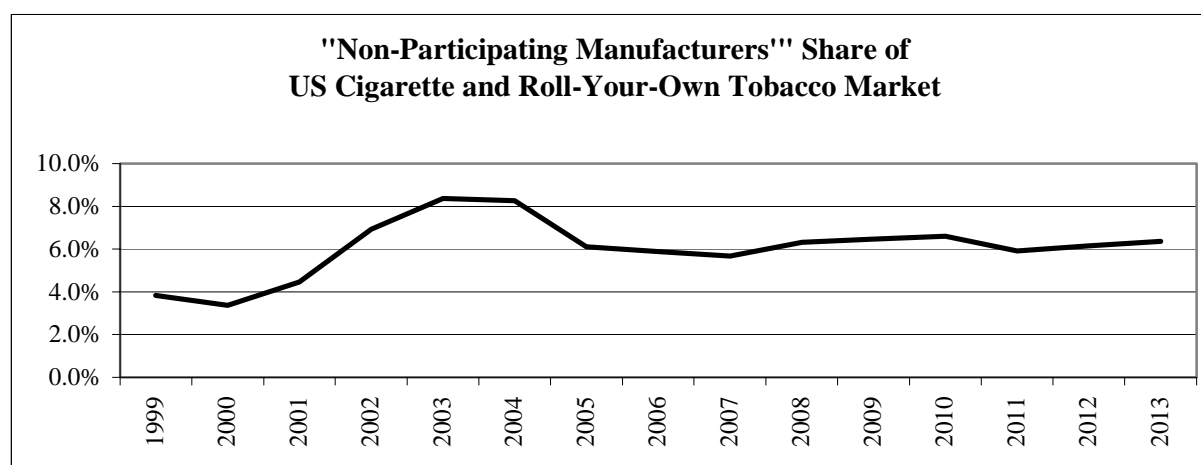
OFFICE OF LEGISLATIVE SERVICES

The OLS projects this bill to likely produce a modest, annually recurring State revenue gain in the form of larger payments from cigarette and roll-your-own tobacco manufacturers that participate in the multi-state MSA. But for the foreseeable future the increase is largely pledged to holders of the State’s Tobacco Settlement Asset-Backed Bonds (Series 2007-1).

Source of State Revenue Gain: The calculation of annual MSA payments by signatory cigarette and roll-your-own tobacco manufacturers considers several factors. Chief among them are MSA participants’ sales volume and market share. Payments to states decline if MSA participants’ sales fall or if MSA participants lose market share to “non-participating manufacturers” but only if the market share loss is attributable, at least in part, to states not “diligently enforcing” the “Model Statute.” New Jersey’s 2014 payment equaled \$204.3 million.



As the National Association of Attorneys General reports, MSA participants' nationwide cigarette and roll-your-own tobacco sales as well as market share have fallen since the MSA's inception, applying downward pressure on MSA payments to states. Notably, MSA participants' United States cigarette sales declined by 42.6 percent, or at an annualized 3.9 percent rate, from some 409.0 billion cigarettes sold in 1999 to some 234.8 billion sold in 2013. Likewise, participating manufacturers have relinquished market share to "non-participating manufacturers," although most of the loss occurred in the early years following the MSA's signing. Since 2005, the market share of "non-participating manufacturers" has hovered between 5.68 percent and 6.60 percent. (The numbers do not distinguish between "non-participating manufacturers" that comply with "Model Statute" requirements and those that do not.)



"Non-participating manufacturers" that evade their MSA-related New Jersey escrow payment obligations enjoy a competitive advantage over MSA participants and compliant "non-participating manufacturers," as the costs of their products do not include escrow payments to New Jersey that on a per-unit basis roughly equal those payments that agreement signatories make directly to states. The noncompliers' competitive advantage, in turn, favors sales of the noncompliers' contraband products at the expense of MSA participants. As a result, states receive lower MSA payments from MSA participants.

The bill seeks to remove the competitive advantage of currently noncompliant "non-participating manufacturers" by broadening the State's MSA-related enforcement tools and responsibilities. If successful, the bill will attenuate contraband cigarette and roll-your-own tobacco sales and narrow the price differential between cigarettes and roll-your-own tobacco produced by MSA participants and compliant "non-participating manufacturers" on the one side and noncompliant "non-participating manufacturers" on the other. Therefore, the bill will in effect shore up sales of MSA participants, and by extension New Jersey's MSA payment stream.

Size of State Revenue Gain: Although the OLS cannot quantify the increase in the State's annual MSA payments that is attributable to the legislation, the gain is likely to be modest for two reasons.

First, New Jersey's MSA payment is not calculated based on New Jersey cigarette sales. Instead, the State receives a fixed percentage of the annual total MSA payment that participating manufacturers make to all signatory states based on nationwide sales. Therefore, any increase in nationwide MSA payments that might result from this bill will be distributed among all signatory states and New Jersey will receive 3.87 percent thereof.

For example, if all estimated New Jersey sales of cigarettes and roll-your-own tobacco produced by "non-participating manufacturers" were converted into sales by MSA participants, New Jersey's annual gain would approximate \$250,000. This figure is based on the State's

estimated \$712 million in FY 2014 cigarette tax collections. At a tax rate of \$2.70 per pack of 20 cigarettes, this translates to the sale of about 263.6 million packs. If the proportion of sales of cigarettes produced by “non-participating manufacturers” relative to total cigarette sales is the same in New Jersey as in the nation as a whole, then “non-participating manufacturers” sold 16.8 million cigarette packs in New Jersey in FY 2014, or 335.3 million individual cigarettes. (The National Association of Attorneys General reports that 6.4 percent of cigarettes and roll-your-own tobacco sold in the United States in calendar year 2013 was produced by “non-participating manufacturers.”) At the MSA “non-participating manufacturers” escrow payment rate of \$0.019 per cigarette, these sales would grow annual nationwide MSA payments by \$6.4 million. New Jersey would receive 3.87 percent thereof, or about \$250,000. Of course, the bill’s revenue gain is likely to be smaller than that, given that the bill does not apply to all “non-participating manufacturers” but only to those that fail to comply with “Model Statute” escrow payment responsibilities.

Second, the bill presents significant enforcement challenges concerning “non-participating manufacturers” that shirk their escrow payment obligations, as New Jersey lacks jurisdiction over many of them. The State already experiences similar enforcement difficulties in seeking to collect its cigarette tax and tobacco products wholesale sales and use tax on cigarettes and roll-your-own tobacco sales that New Jersey residents make over the Internet or in tribal smoke shops. As a result, it is unclear to what extent this bill will reduce sales of cigarettes and roll-your-own tobacco produced by noncompliant “non-participating manufacturers” and what the ensuing impact thereof will be on MSA participants and their MSA payments to the states.

Allocation of State Revenue Gain: The State has securitized the majority of its MSA payment stream through FY 2041. Consequently, for the foreseeable future, State finances will only benefit from a portion of any larger MSA payment the State may receive because of the bill.

Specifically, the State pledged 76.26 percent of its MSA payments through June 2041 for principal and interest payments on its Tobacco Settlement Asset-Backed Bonds (Series 2007-1). Under a separate pledge agreement, it allocated the remaining 23.74 percent of its MSA payments to holders of two bond classes starting in FY 2017 until the bond classes are paid off, which is projected to occur in FY 2023.

Therefore, if this bill produces a State revenue gain, the State General Fund will receive 23.74 percent of the FY 2016 gain, no part of the gain from FY 2017 through FY 2022, some part less than 23.74 percent of the FY 2023 gain, 23.74 percent of the annual gain from FY 2024 through FY 2041, and all of the annual gain starting in FY 2042.

Section: Revenue, Finance and Appropriations

Analyst: Thomas Koenig
Lead Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).