SESSION OF 2005

CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 151

As Agreed to April 1, 2005

Brief *

SB 151 amends a statute dealing with the Tobacco Master Settlement Agreement in regard to escrow payments made by non-participating manufacturers and the amount of money placed in escrow by these manufacturers that can be released back to them.

SB 151 requires non-participating manufacturers to place and keep in escrow the same amount of money that participating manufacturers pay to the state.

Conference Committee Action

The Conference Committee agreed to delete the contents of SB 151 dealing with the crime of trafficking and to insert the contents of SB 51 into the bill.

Background

The bill was supported by representatives of R.J. Reynolds, Covington & Burling, Altria, and Phillip Morris. A representative of Xcaliber International opposed the bill.

As background, when the tobacco companies entered into the Master Settlement Agreement with the 46 states involved in the litigation, a provision was written into the agreement which was designed to insure that the original participating manufacturers who had entered into the agreement would make payments to each of the states involved in the settlement pursuant to the percentage of sales

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*****Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at http://www.kslegislature.org in that state relative to nationwide sales of cigarettes. (The Kansas share is less than 0.9 percent of nationwide sales.)

Subsequent to the Master Settlement Agreement, numerous states, including Kansas, enacted legislation to implement an escrow payment system for tobacco companies which did not enter into the original Master Settlement Agreement, or did not sign on as subsequent participating manufacturers. The tobacco companies who have not signed on to the Master Settlement Agreement are referred to as non-participating manufacturers.

Proponents of SB 51 said these non-participating tobacco manufacturers are using a loophole in the allocable share language of the escrow statute passed by Kansas and other states subsequent to the Master Settlement Agreement, by marketing cigarettes in a small number of states, as opposed to nationwide. The net effect of the utilization of this loophole has been to permit non-participating manufacturers to pay a small fraction of the escrow payment they should be making to a particular state by applying the allocable share percentage applicable to that state even though the percentage of sales of these manufacturers in that specific state are considerably higher.

Another effect is that non-participating manufacturers sell their cigarettes at a cheaper price since they are not making comparable escrow payments. As a result, the market share for these manufacturers has increased, thus reducing payments to the states, including Kansas, under the Master Settlement Agreement.

The National Association of Attorneys General has recommended states adopt amendments using the language in SB 51 to close this allocable share loophole. So far, 37 of the 46 states who are signatories to the Master Settlement Agreement have enacted legislation to close the allocable share loophole, as SB 51 would do.

The opponent of the bill said the amendments were in violation of the Sherman Antitrust Act and amounted to price fixing. He said the bill will only cause the price of these cigarettes to increase which is what “big tobacco” wants.