

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 a.m. on March 26, 2004 in Room 514-S of the Capitol.

All members were present except:

Representative Dean Newton- excused
Representative Vern Osborne- excused

Committee staff present:

Alan Conroy, Legislative Research
Amy VanHouse, Legislative Research
Michele Alishahi, Legislative Research
Carolyn Rampey, Legislative Research
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Administrative Analyst
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:

Others attending:

See Attached List.

- Attachment 1 Testimony on **HB 2946** by Karl Hansen, Attorney General Office
- Attachment 2 Testimony on **HB 2946** by Keith Burdick, Xcaliber International, Pryor, OK
- Attachment 3 Additional information on **HB 2946** provided by the Council of Independent Tobacco Manufacturers of America (CITMA)

Hearing on HB 2946 - Payments by certain tobacco product manufacturers under the master settlement agreement.

Chairman Neufeld recognized Keith Hansen, Assistant Attorney General, who presented testimony as a neutral conferee on **HB 2946** (Attachment 1). Mr. Hansen explained that the proposed amendment to state tobacco settlement proceeds statutes, is intended to impose an assessment on nonparticipating manufacturers (NPM) similar to that required to be paid by Participating Manufacturers (PM) under the Master Settlement Agreement (MSA). The assessment paid by NPMs is placed in an escrow account, ensuring that funds would be available to pay any judgments or penalties the state may obtain against the NPM in the future. However, current law includes a loophole in the escrow calculation which allows the NPM to be obligated for making a net escrow payment based only upon the state's allocable share as determined by the MSA, regardless of the quantity of cigarettes actually sold by a given NPM in the State of Kansas. The practical effect has been that some NPMs have significantly reduced their escrow obligations far below what the NPM would have been required to pay to the states had it been a PM under the MSA, thus negating two intended effects of the statute, those being to level the playing field between participating and nonparticipating manufacturers, and to achieve an adequate reserve of funds from which to collect future judgments and penalties, if any.

Mr. Hansen presented several options for amendments to **HB 2946**, which possibly could make the assessment more equitable to both PMs and NPMs:

- Amend the current escrow structure to allow the escrow calculation to be based on the actual number of units sold in the state and not based on the state's national allocable share. This amendment does not address bankruptcy or litigation issues; however, is supported by the National Association of Attorney Generals and PMs.
- An Equity Fee Assessment would require that the current escrow structure remain in place. In addition to escrow payments, there would be an assessment levied against NPMs only for a specified amount, generally proposed at a rate of \$.0175 per stick. This assessment would in essence recapture and possibly exceed any escrow amount refunded to the NPM.
- The Council of Independent Tobacco Manufacturers of America (CITMA) have proposed that the current escrow structure remain in place, including the refund provision. An assessment would be

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levied on all manufacturers, with the PMs getting a credit for amounts due under the MSA. The NPMs would be required to pay the difference between the assessment, and whatever may be left in escrow after the refund, directly to the state. The levy on NPMs would require individualized calculations for each manufacturer, resulting in some NPMs paying more into escrow, and others paying a larger assessment to the state. Ownership of money in escrow is retained by the NPM both under current law and this proposal. An early draft of this bill also contained a provision mandating that the state provide either a tax credit or deduction for amounts paid into escrow.

The Chair recognized Keith Burdick, Partner/CFO, Xcaliber International of Pryor, OK, who presented testimony on behalf of the Council of Independent Tobacco Manufacturers of America (CITMA) in opposition to **HB 2946** (Attachment 2). Additional information provided by the CITMA was distributed to the Committee (Attachment 3). Mr. Burdick stated that the CITMA opposes the legislation because it gives special treatment to select cigarette manufacturers. Mr. Burdick further indicated that CITMA supports an assessment that would apply equally to all cigarette manufacturers, such as the legislation currently pending before the Alabama Legislature. Responding to a question from the Committee concerning problems with the Master Settlement Agreement, Mr. Burdick noted that there has been growth in sales beyond the agreement with regard to exempt sales.

Chairman Neufeld recessed the hearing on **HB 2946** at 10:00 a.m. The hearing will be continued at 9:00 a.m. on March 31, 2004.

Melvin Neufeld, Chairman