

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 680

Introduced by Senator Wolk

February 22, 2013

An act to amend Section 104556 of the Health and Safety Code, relating to tobacco settlement moneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 680, as amended, Wolk. Tobacco Settlement Fund.

Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. Existing law establishes in the State Treasury the Tobacco Settlement Fund for the deposit of the state's share of moneys received under the Master Settlement Agreement. Existing law provides for the annual appropriation of moneys from the fund by the Legislature for specified health care programs and services, including expansions in the Medi-Cal program.

This bill would express the intent of the Legislature to enact legislation that would revise the provisions governing the Tobacco Settlement Fund.

Existing law requires a tobacco product manufacturer selling cigarettes to consumers within the state to either become a participating manufacturer, as defined, and generally perform its financial obligations under the MSA, or to place specified amounts into a qualified escrow fund, which are calculated on a per unit sold basis, as specified. For each tobacco product manufacturer that places amounts into a qualified escrow fund, existing law requires that manufacturer to certify to the Attorney General that the manufacturer has complied with existing law,

and the failure to place all required funds into escrow subjects the manufacturer to civil penalties, as specified.

This bill would, for the purposes of the calculating the amount a tobacco product manufacturer is required to place in the qualified escrow account, revise the definition of “units sold” to specify that it is the number of cigarettes sold to a consumer, regardless of whether the state excise tax was collected, but would exclude, among other things, cigarettes sold at federal military installations.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 104556 of the Health and Safety Code is
2 amended to read:

3 104556. The definitions contained in this section shall govern
4 the construction of this article.

5 (a) “Adjusted for inflation” means increased in accordance with
6 the formula for inflation adjustment set forth in Exhibit C to the
7 Master Settlement Agreement.

8 (b) “Affiliate” means a person who directly or indirectly owns
9 or controls, is owned or controlled by, or is under common
10 ownership or control with, another person. Solely for purposes of
11 this definition, the terms “owns,” “is owned,” and “ownership”
12 mean ownership of an equity interest, or the equivalent thereof,
13 of 10 percent or more, and the term “person” means an individual,
14 partnership, committee, association, corporation, or any other
15 organization or group of persons.

16 (c) “Allocable share” means allocable share as that term is
17 defined in the Master Settlement Agreement.

18 (d) “Cigarette” means any product that contains nicotine, is
19 intended to be burned or heated under ordinary conditions of use,
20 and consists of or contains (1) any roll of tobacco wrapped in paper
21 or in any substance not containing tobacco; (2) tobacco, in any
22 form, that is functional in the product, which because of its
23 appearance, the type of tobacco used in the filler, or its packaging
24 and labeling, is likely to be offered to, or purchased by, consumers
25 as a cigarette; or (3) any roll of tobacco wrapped in any substance
26 containing tobacco which, because of its appearance, the type of
27 tobacco used in the filler, or its packaging and labeling, is likely

1 to be offered to, or purchased by, consumers as a cigarette
2 described in this section. “Cigarette” also includes “roll-your-own”
3 tobacco, meaning any tobacco which, because of its appearance,
4 type, packaging, or labeling is suitable for use and likely to be
5 offered to, or purchased by, consumers as tobacco for making
6 cigarettes. For purposes of this definition of “cigarette,” 0.09
7 ounces of “roll-your-own” tobacco shall constitute one individual
8 “cigarette.”

9 (e) “Master Settlement Agreement” means the settlement
10 agreement and related documents entered into on November 23,
11 1998, by the state and leading United States tobacco product
12 manufacturers.

13 (f) “Qualified escrow fund” means an escrow arrangement with
14 a federally or state chartered financial institution having no
15 affiliation with any tobacco product manufacturer and having assets
16 of at least one billion dollars (\$1,000,000,000) where the
17 arrangement requires that the financial institution hold the escrowed
18 funds’ principal for the benefit of releasing parties and prohibits
19 the tobacco product manufacturer placing the funds into escrow
20 from using, accessing, or directing the use of the funds’ principal
21 except as consistent with subdivision (b) of Section 104557.

22 (g) “Released claims” means released claims as that term is
23 defined in the Master Settlement Agreement.

24 (h) “Releasing parties” means releasing parties as that term is
25 defined in the Master Settlement Agreement.

26 (i) “Tobacco product manufacturer” means an entity that after
27 the date of enactment of this article directly, and not exclusively
28 through any affiliate:

29 (1) Manufactures cigarettes anywhere that the manufacturer
30 intends to be sold in the United States, including cigarettes intended
31 to be sold in the United States through an importer (except where
32 the importer is an original participating manufacturer as that term
33 is defined in the Master Settlement Agreement, that will be
34 responsible for the payments under the Master Settlement
35 Agreement with respect to such cigarettes as a result of the
36 provisions of subsection II(mm) of the Master Settlement
37 Agreement and that pays the taxes specified in subsection II(z) of
38 the Master Settlement Agreement, and provided that the
39 manufacturer of such cigarettes does not market or advertise such
40 cigarettes in the United States); or

1 (2) Is the first purchaser anywhere for resale in the United States
2 of cigarettes manufactured anywhere that the manufacturer does
3 not intend to be sold in the United States; or

4 (3) Becomes a successor of an entity described in paragraph
5 (1) or (2).

6 The term “tobacco product manufacturer” shall not include an
7 affiliate of a tobacco product manufacturer unless the affiliate itself
8 falls within any of paragraphs (1) to (3) of this subdivision.

9 (j) “Units sold” means the number of individual cigarettes sold
10 *to a consumer* in the state by the applicable tobacco product
11 manufacturer, whether directly or through a distributor, retailer,
12 or similar intermediary or intermediaries, during the year in
13 question, ~~as measured by excise taxes collected by the state on~~
14 ~~packs, or “roll-your-own” tobacco containers, bearing the excise~~
15 ~~tax stamp of the state. regardless of whether the state excise tax~~
16 ~~was collected. “Units sold” shall not include cigarettes sold on~~
17 ~~federal military installations, sold by a Native American tribe to~~
18 ~~a member of that tribe on that tribe’s land, or that are otherwise~~
19 ~~exempt from state excise tax pursuant to federal law.~~ The State
20 Board of Equalization shall adopt any regulations as are necessary
21 to ascertain the amount of state excise tax paid on the cigarettes
22 of the tobacco product manufacturer for each year.

23 ~~SECTION 1. It is the intent of the Legislature to enact~~
24 ~~legislation that would revise the provisions governing the Tobacco~~
25 ~~Settlement Fund.~~