

OKLAHOMA TAX COMMISSION

FISCAL IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT
SECOND REGULAR SESSION, FIFTY-FOURTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: March 13, 2014

BILL NUMBER: HB 2363 STATUS AND DATE OF BILL: Engrossed 03/12/2014

AUTHORS: House Cox Senate Treat

TAX TYPE (S): Cigarette SUBJECT: Other

PROPOSAL: Amendatory & New Law

The measure proposes amendments and additions to the Master Settlement Agreement Complementary Act. [Detailed description attached]

EFFECTIVE DATE: November 1, 2014

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 15: None

FY 16: None

ADMINISTRATIVE IMPACT:

Insert the estimated cost or savings to the Tax Commission due to this proposed legislation.

FY 15: None

Mar. 13, 2014
DATE

Rick Miller
DIVISION DIRECTOR

cjc

3-13-14
DATE

Reece Womack
REECE WOMACK, ECONOMIST

March 14, 2014
DATE

Dan Cook
FOR THE COMMISSION

ATTACHMENT TO FISCAL IMPACT-HB 2363 - [Engrossed] Prepared March 13, 2014

Section 1-68 O.S. § 360.9

The measure eliminates language about bonding requirements related to the listing of nonparticipating manufacturers in the Oklahoma Tobacco Directory. The bill provides new language requiring any nonparticipating manufacturer to post a bond for the exclusive benefit of the state if:

- It was not listed in the Oklahoma Tobacco Directory during the four consecutive calendar quarters preceding its application to be on the Directory;
- It had been previously listed in the Directory, but was involuntarily removed or denied recertification for noncompliance with the Master Settlement Agreement or the Prevention of Youth Access to Tobacco Act, unless the removal was determined to have been erroneous or illegal;
- The Attorney General reasonably determines that the nonparticipating manufacturer who has filed a certification pursuant to Section 360.4 of Title 68 poses an elevated risk for noncompliance with the Master Settlement Agreement or with the Prevention of Youth Access to Tobacco Act.

The bill outlines conditions under which a nonparticipating manufacturer is deemed to pose an elevated risk for noncompliance with the Master Settlement Agreement or the Prevention of Youth Access to Tobacco Act.

Also, the measure strikes language related to bonding requirements, conditions for posing an elevated risk of noncompliance and the definition for newly qualified nonparticipating manufacturer and the bonding requirements for these persons.

The bill defines an affiliate and lists conditions by which a nonparticipating manufacturer must abide to be included in the Oklahoma Tobacco Directory which includes consent to be sued in the district courts of the State of Oklahoma for purposes of the state enforcing any provision of the Prevention of Youth Access to Tobacco Act, the Master Settlement Agreement Complementary Act and the cigarette excise tax statutes and the posting of a bond by a corporate surety located within the United States in an amount equal to the greater of \$50,000 or 50 percent of the required escrow that the manufacturer in either current or predecessor form was required to deposit as a result of its sales in Oklahoma during the last full calendar year it was listed in the Directory.

It also requires a nonparticipating manufacturer to post the bond for three consecutive years, or longer if the Attorney General determines the manufacturer or imposter poses an elevated risk at the end of the three-year period.

It states if a manufacturer fails to make the deposit within 15 days of the due date, the State of Oklahoma may execute on the bond in the amount of the remaining escrow deposit due.

The bill also authorizes the Attorney General to exclude a manufacturer from inclusion in the directory if the manufacturer:

- Does not certify it is subject to, without any immunity, the Master Settlement Agreement Complementary Act and the Prevention of Youth Access to Tobacco Act;

- Fails to disclose that a state or the federal government has brought an action in compliance with any state or federal law, regulating the sale and or distribution of tobacco products, including the escrow statute of another state; or
- Fails to sell only through an Oklahoma-licensed wholesaler any tobacco product sold into the state or fails to provide monthly PACT Act reports to the Oklahoma Tax Commission and the Attorney General for sales into the state.

The Attorney General is authorized to require the nonparticipating manufacturer to submit all information and materials the Attorney General deems appropriate to determine compliance of the nonparticipating manufacturer.

Section 2 68 O.S. § 360.10

The bill also authorizes the Attorney General, when considered necessary for the enforcement of the Prevention of Youth Access to Tobacco Act or the Master Settlement Agreement, to require each wholesaler or distributor of cigarettes and roll-your-own tobacco products intended for sale to file with the Attorney General a report each month of its sales, by brand, to retailers and wholesalers located in this state.

It provides the due date for the report and outlines the information that must be contained therein. The bill also requires the report to be electronically filed with the Attorney General and the Tax Commission and allows the Attorney General to establish alternative filing procedures and methods for those who demonstrate an inability to comply with the electronic requirement. It authorizes the Attorney General to use the report information along with reports received from the Tax Commission to investigate and enforce the provisions of the Prevention of Youth Access to Tobacco Act and the Master Settlement Agreement Complementary Act along with statutes related to contraband tobacco sales and the seizure thereof. It also authorizes the Attorney General to release the reports to only those third parties who have signed and pledged to abide by the terms of any confidentiality agreement that the Attorney General deems necessary.

The primary emphasis of the measure pertains to the Attorney General's handling of the Nonparticipating Manufacturers filing with its office. Section 2 contains language requiring Oklahoma cigarette wholesalers to submit electronically to both the Attorney General and the OTC a detailed sales report on their sales in Oklahoma. Currently, out-of-state cigarette wholesalers file this report referred to as the PACT Act report but instate cigarette wholesalers do not. This measure would require them to do so.

There is no estimated change in state revenues or any administrative costs/savings associated with the proposals set forth in HB 2363 .