

Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal Increase
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Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- A non-participating tobacco product manufacturer must certify to the Attorney General that it placed the appropriate amount of funds in escrow by April 15 each year, or the Attorney General may bring a civil action on behalf of the state against the manufacturer. A lawsuit, such as this, would most likely be brought in the Court of Common Pleas for Franklin County. However, the number of such lawsuits that might be filed annually is likely to be extremely small, as there are currently only five non-participating tobacco product manufacturers. As a result, we believe the additional burden that might be placed on the Franklin County Court of Common Pleas annually will be minimal at most.

Detailed Fiscal Analysis

This bill requires a tobacco product manufacturer who sells cigarettes in Ohio, but is not a participant in the “Master Settlement Agreement” to place specified amounts of money into a qualified escrow fund each year to be used to pay any future judgment or settlement on a state claim brought against the manufacturer regarding tobacco products. Additionally, the bill provides penalties that may be imposed upon a manufacturer who fails to place the required funds into escrow.

The enactment and enforcement of this bill satisfies a provision within the settlement agreement that was entered into between leading tobacco manufacturers and state attorney generals on November 23, 1998. Currently, the state anticipates receiving revenues of nearly \$9.9 billion dollars over the next 25 years from the settlement. However, failure to enact this bill could result in diminishing these anticipated revenues by up to 100 percent per year. If a court of proper jurisdiction declares a state law based on the agreement’s model statute to be invalid, then the state’s annual payment would be reduced by no more than 65 percent. This bill is based on the model statute described in Exhibit T of the master settlement agreement.

Manufacturers participating in the tobacco settlement agreement have raised their prices for tobacco products in order to pay for the payments due to the states. Non-participating manufacturers could potentially increase their profits by offering tobacco products at lower prices. This bill is designed to create a level playing field between participating and non-participating manufacturers with regards to prices.

The bill requires non-participating tobacco product manufacturers who sell their products in Ohio to deposit into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as adjusted for inflation):

- for 1999, \$.0094241 per unit sold after the effective date of this section;
- for 2000, \$.0104712 per unit sold after the effective date of this section;
- for both 2001 and 2002, \$.0136125 per unit sold after the effective date of this section;

- for 2003 through 2006, \$.0167539 per unit sold after the effective date of this section; and
- for 2007 and each year thereafter, \$.0188482 per unit sold after the effective date of this section.

The funds placed into escrow will be released only to pay for a judgement or settlement against a tobacco product manufacturer by the State of Ohio or any releasing party located in or residing in Ohio. The funds will be released in the order in which they were placed into the escrow fund and only to the extent and at the time necessary to make the required payment. The interest earned on funds in escrow shall be returned to the manufacturer that deposited the original funds. Twenty-five years from the date the funds were placed into escrow, they will revert back to the tobacco product manufacturer.

A non-participating tobacco product manufacturer must certify to the Attorney General that it placed the appropriate amount of funds in escrow by April 15 each year, or the Attorney General may bring a civil action on behalf of the states against the manufacturer. A lawsuit, such as this, would most likely be brought in the Court of Common Pleas for Franklin County. Any tobacco product manufacturer who fails in any year to place into escrow the funds specified above will have 15 days to place these funds into the fund to be considered in compliance of this bill. If the manufacturer fails to do so, the court may impose a civil penalty against the manufacturer: (1) in an amount not to exceed 5% of the amount improperly withheld from the escrow fund; and (2) in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

If the tobacco manufacturer knowingly withholds funds from escrow and does not place the funds into the escrow fund within 15 days, the court may impose a civil penalty against the manufacturer: (1) in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation; and (2) in a total amount not to exceed 300% of the original amount improperly withheld from escrow. Also, the tobacco manufacturer may not be permitted to sell its products to Ohio consumers for a maximum of 2 years for a second violation.

Any civil penalty imposed by a court would be paid to the state's GRF. The amount of additional GRF that might be collected as a result is very difficult for us to estimate at this time.

Currently, 21 of the leading tobacco product manufacturers have agreed to participate in the master settlement agreement. According to the staff of the Ohio Attorney General's office, 99.8 percent of the current tobacco products market is represented by the manufacturers participating in the agreement. The enactment of this bill will enable Ohio to receive the most funds eligible under the agreement. If the bill is enacted, the potential for civil suits filed by the Attorney General against non-participating tobacco companies is extremely small. A lawsuit could be filed only against a manufacturer who does not place funds into an escrow account and represents only 0.2 percent of the market not currently covered by the settlement agreement.

□ *LBO staff: Corey C. Schaal, Budget/Policy Analyst*

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