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Testimony of Office of Attorney General on House Bill 2451
Presented to the House Judiciary Committee
By Chief Deputy Attorney General Jeff Chanay

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Chairman Patton and members of the Committee, thank you for the opportunity to testify in support of the passage of House Bill 2451.

The Tobacco Master Settlement Agreement

A brief overview of the Tobacco Master Settlement Agreement (MSA) may be helpful to understand the context of this legislation.

- The Tobacco Master Settlement Agreement was entered into in November 1998.

- The first four states that filed suit against the tobacco manufacturers (Texas, Minnesota, Mississippi, and Florida) settled in 1997.

- All other states plus the District of Columbia, Puerto Rico, and the 4 U.S. Territories settled their claims in 1998 with an estimated present value of $206 Billion. It is this settlement that is known as the MSA.

- Under the MSA, the Participating Manufacturers agreed: (1) To limit substantially the advertising, promotion, marketing or packaging of cigarettes, including a ban on "targeting youth," limitations on tobacco brand name sponsorships, ban on tobacco brand name merchandise, etc. and (2) To make payments to the States in perpetuity

- The settling states agreed to release the Participating Manufacturers from specified claims that the States (but not individuals) had and might have in future for costs arising out of tobacco related illnesses. Payments are currently due to the settling states on or about April 15 of each year.

- The tobacco manufacturers that did not join the MSA are known as the Non-Participating Manufacturers (NPMs). In order to protect the public health gains achieved by the MSA and to incentivize all tobacco manufacturers into joining the MSA, it was agreed that a dollar amount of all NPM sales in the settling states would be paid into escrow. This required escrow payment has the effect of leveling the price of cigarette sales, thereby reducing the potential application of the NPM adjustment, which at certain levels lowers the amount of money that the PMs pay to the states each year under the MSA. NPMs represent less than 15 percent of tobacco sales in Kansas.

What does the bill do?

Under current law, the non-participating tobacco manufacturers (NPMs) who are not signatories to the 1998 Master Settlement Agreement (MSA) involving Kansas must pay each year into escrow an amount equal to what they would pay to Kansas if they were signatories to the MSA. Currently K.S.A. 50-6a03 requires any tobacco product manufacturer that is not a participating manufacturer to the MSA to pay annually a dollar amount for all units sold within the state into an escrow account to be held for twenty-five years before being eligible for release. House Bill 2451 would replace that annual escrow payment with an equity fee that would instead go to the state and be deposited to the Kansas Endowment for Youth Fund, just as the payments made under the MSA. The amount of the annual obligation to be paid by these NPMs (as based upon the payment formula) would not change.

How will this benefit Kansas?

This change would tend to:

(1) help avoid significant future potential liability to the state by improving the ability of Kansas to diligently enforce the obligations of NPMs to make their payments;
(2) encourage NPMs to join the MSA, a step that would help promote uniformity in tobacco regulation; and
(3) generate a modest amount of additional revenue (estimated at about $9 million based on current numbers annually) that under Kansas law would be dedicated to supporting children's programs just like MSA payments.

Why now?

Kansas in years past has been in arbitration with the tobacco manufacturers who participate in the MSA for allegedly failing to meet the state's obligations to "diligently enforce" its qualifying statute, which include the NPM escrow requirements. The potential liability of an adverse determination to the state through arbitration or another legal proceeding could have reached hundreds of millions of dollars over multiple years. Through extensive negotiation, the Office of Attorney General has extinguished 18 years of potential past liability. By working with the legislature and other parties, Kansas has taken steps to improve its diligent enforcement going forward, particularly by improving accounting for tobacco sales on tribal lands by entering into compacts with our four resident Tribes. The change proposed in House Bill 2451 would further strengthen the state's ability to diligently enforce the NPM obligations going forward. In sum, we have through years of work successfully eliminated large potential liability caused by past actions and are proposing steps to help ensure that does not happen again.

In addition, escrow payments made by NPMs in the early years of the MSA will soon begin "rolling out" of escrow after 25 years and will be returned to the NPMs.

Requested action

House Bill 2451 is the carefully negotiated product of several years of discussions among many parties, including the Office of Attorney General, other states, and participating tobacco manufacturers. Changes to the language of the bill will change and therefore negate the negotiated agreement. Therefore, we recommend and request its passage without amendments.

Thank you and I will stand for questions.

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