

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1209

**PRINTER NO.** 1279

**AMOUNT**

No Fiscal Impact

**FUND**

Tobacco Settlement Fund

**DATE INTRODUCED**

May 19, 2023

**PRIME SPONSOR**

Representative Twardzik

**DESCRIPTION**

House Bill 1209 amends the Tobacco Product Manufacturer Directory Act (Act 64 of 2003) to modify the definition of “units sold” to be consistent with changes in the Tobacco Settlement Agreement Act, to extend liability under the act to importers, to ensure that nonparticipating manufacturers and their importers comply with their legal obligations and to otherwise implement the Nonparticipating Manufacturer Adjustment Settlement Agreement.

This bill amends the Tobacco Product Manufacturers Directory Act to make various changes to the responsibilities of nonparticipating manufacturers and importers. First, the legislation amends the definition of “units sold” to be the number of individual cigarettes sold in Pennsylvania by the applicable tobacco product manufacturer during the year in question on which the Commonwealth has authority under federal law to collect state excise tax unless the cigarettes are exempt from state excise taxes under federal law.

The bill also adds definitions for “importer” and “Nonparticipating Manufacturer Adjustment Settlement Agreement.” The bill requires that nonparticipating manufacturers and their importers bear joint and several liability for deposit of all escrow and payment of other costs required under the Tobacco Settlement Agreement Act. A nonparticipating manufacturer, in their required certification to the Office of Attorney General, would be required to include a complete list of its importers into the United States who sell cigarettes into the Commonwealth and the brand families sold by the importers.

It shall be the responsibility of the nonparticipating manufacturer to ensure its importers’ compliance with the law, and any noncompliance, including failure to make required escrow payments, shall constitute grounds for removal of the nonparticipating manufacturer’s brand families from the directory. In addition, the bill requires all nonparticipating manufacturers to post a bond for the benefit of the Commonwealth.

If a nonparticipating manufacturer or its importers have failed to make escrow deposits equal to the full amount due within 15 days following the due date for the certification under the Tobacco Settlement Agreement Act, the Attorney General may execute upon the bond to recover delinquent escrow, civil penalties and costs

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authorized under the Tobacco Settlement Agreement Act. The recovered funds shall be deposited into the General Fund. Escrow obligations, civil penalties, costs, fees and disgorgement of profits determined to be due above the amount collected on the bond shall remain due from the nonparticipating manufacturer and from any importer that sold cigarettes during the period of default. Any delinquent escrow recovered shall reduce the amount of escrow due from the nonparticipating manufacturer by the dollar amount collected.

Nonparticipating manufacturers or their importers that do not make timely escrow payments pursuant to the Tobacco Settlement Agreement Act shall be removed from the directory even if their bond fully covers the escrow owed or other costs.

The Office of Attorney General would be required to attempt to obtain consent from participating manufacturers under the Master Settlement Agreement for the change in the definition of "units sold." If consent is obtained, the Office of Attorney General shall provide notice to the Secretary of Revenue and transmit notice of the consent to the Legislative Reference Bureau for publication in the next available issue of the Pennsylvania Bulletin. If consent is not obtained, the Office of Attorney General would similarly need to notify the Secretary of Revenue and transmit a notice of refusal to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

The requirements with regard to obtaining consent from participating manufacturers and publication in the Pennsylvania Bulletin take effect immediately, and the remainder of the act takes effect 60 days after the required publication.

### **FISCAL IMPACT:**

Enactment of this legislation will have no fiscal impact on Commonwealth funds.