DEPARTMENT OF TAXATION
2003 Fiscal Impact Statement

1. Patron Byron

2. Bill Number HB 2536

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee House Finance

4. Title Enforcement of Requirements for Tobacco Product Manufacturers

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

5. Summary/Purpose:

This bill would enact enforcement and notification provisions for the certification of cigarette brands that are compliant with the Master Settlement Agreement and Virginia's Non-Participating Manufacturer statute.

The effective date of this bill is not specified.

6. Fiscal Impact Estimates are: Not available. (See Line 8.)

6a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2002-03	$0	0	GF
2003-04	$487,175	4	GF
2004-05	$246,781	4	GF

7. Budget amendment necessary: Yes.
ITEM(S): 283 and 285, Department of Taxation

8. Fiscal implications:

This bill would have no effect on General Fund revenues.

The Department would incur administrative costs of $487,175 in Fiscal Year 2004 and $284,781 in Fiscal Year 2005 and fiscal years thereafter. Included in these costs are 4 additional positions for the Department's Tobacco Unit that will be necessary to oversee compliance and diligently enforce the increased reporting requirements of this bill. Costs are also included for forms and systems development.

9. Specific agency or political subdivisions affected:

Department of Taxation

Office of the Attorney General

10. Technical amendment necessary: None.

11. Other comments:

Master Settlement Agreement

On November 23, 1998, leading United States tobacco product manufacturers, called participating manufacturers (PMs) entered into the Master Settlement Agreement (MSA) with the Commonwealth and 45 other states. The agreement obligated PMs, in return for release from past, present and certain future claims against them, to pay substantial sums to the Commonwealth. Tobacco product manufacturers who are not parties to the MSA, called nonparticipating manufacturers (NPMs), must pay sums into a qualified escrow fund from which claims may be paid if such manufacturers are determined in future years to have acted culpably.

The escrow fund serves as a financial responsibility mechanism to guarantee a source of compensation and to prevent NPMs from becoming judgement-proof before liability may arise. The NPM statute must be diligently enforced to ensure a state is exempt from the application of the NPM adjustment contained in the MSA.

Virginia's Nonparticipating Manufacturers Statute

The NPM Statute requires any tobacco product manufacturer selling cigarettes after July 1, 1999, who does not participate in the MSA to make deposits into a qualified escrow fund. The deposits are based on the number of cigarettes sold in Virginia, multiplied by an amount that increases from $.0094241 in 1999 to $.0188482 in 2007 and thereafter, as adjusted for inflation. Funds may be withdrawn from escrow to pay judgements or settlements on certain claims; if the amount deposited exceeds the Commonwealth's allocable share of payments. The NPM would be required to make under the MSA; or, if not sooner released, 25 years after they were deposited.

The NPM statute also requires that the NPMs certify to the Office of the Attorney General annually that it is in compliance with the statute. If the NPM fails to deposit the required funds into the escrow account, the Attorney General may bring a civil action against the NPM on behalf of the Commonwealth. On the second violation, the manufacturer may be barred from selling cigarettes in the Commonwealth for no more than two years.

Proposal

This bill would require every tobacco product manufacturer whose cigarettes are sold in Virginia to certify annually to the Tax Commissioner and the Attorney General that it is a PM or NPM in compliance with the NPM statute. In addition to making this designation, each tobacco product manufacturer would include with its certification a list of brand families sold in Virginia. NPMs would also have to report detailed information on how many units of each brand were sold in the Commonwealth in the preceding year. Only brands covered under the MSA or in the NPM escrow fund may be certified. All manufacturers must maintain records

necessary for the certification for a period of five years. The first certification required under this bill would be due on September 15, 2003.

In addition to this information, NPMs must certify that (i) it is either registered to do business in the Commonwealth or provide a registered agent in the Commonwealth, (ii) it has established and maintained a qualified escrow fund under the NPM statute along with a summary of all activity of such escrow fund, and (iii) it is in full compliance with the NPM statute. The Attorney General may request proof of any NPM escrow fund from the financial institution handling such fund.

The Attorney General would publish on the Internet a list of all brands that have been certified. This bill would make it unlawful for any person to affix a Virginia tax stamp on any brand that is not published as certified by the Attorney General. Any person who does stamp a non-certified brand would be subject to the following penalties or actions: (1) a fine equal to the lesser of 500% of the value of the cigarettes or $5,000, (2) confiscation of the illegally stamped cigarettes, (3) a Class 2 misdemeanor, and (4) the enforcement provisions proscribed under the Virginia Consumer Protection Act. The Attorney General is also allowed to obtain an injunction to stop the stamping of any non-certified brand.

If a dispute should arise regarding a decision of the Attorney General to either not certify a brand or remove a brand from the list of certified brands, such dispute would be handled in the manner proscribed under the Administrative Process Act. This bill would allow the Attorney General to recover all costs and fees necessary for any enforcement action from the violating party. If a court finds that a person has violated any of the provision of this bill or the NPM statute, the court shall order all profits and gains from the illegal activity to paid to the Commonwealth.

This bill would also require any person who is authorized to affix stamps to cigarettes or required to pay the excise tax on cigarettes to submit quarterly reports to the Tax Commissioner and the Attorney General that includes a list by brand of the number of cigarettes that such person affixed stamps to during the previous quarter or otherwise paid the tax due for such cigarettes. The first report required under this bill would be due on August 1, 2003.

Other Legislation

Senate Bill 956 is similar to this bill.

cc : Secretary of Finance

Date: 01/21/03 CT
Document : S:\2003leg\WorkInProcess\OTPwork\House Bills\hb2536F161.doc