



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 73 [2003 Assembly Bill 494]	Nonparticipating Tobacco Manufacturers
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

BACKGROUND

In the 1998 “Master Settlement Agreement” (MSA) between states and tobacco manufacturers the settling, or participating, manufacturers (PMs) agreed, in exchange for the release of state claims, to make specified payments to the settling states and to abide by various public health restrictions on advertising, promotion, and marketing of cigarettes. Cigarette manufacturers not party to the MSA were not released from state claims and are not subject to the advertising, promotion, and marketing restrictions.

To address concerns that nonparticipating tobacco manufacturers (NPMs) would have a competitive advantage over PMs and would not be able to pay potential future claims by states, settling states enacted a model escrow statute. The model escrow statute requires an NPM to make escrow deposits based on the number of cigarettes sold in a particular state at a set amount per cigarette sold. Under the MSA, settling states that enact and diligently enforce a model escrow statute are not subject to certain downward adjustments in their MSA payments.

ACT 73

Act 73 addresses two general aspects of the model escrow statute: (1) the amount of refunds NPMs are eligible to receive from their escrow funds; and (2) enforcement of the statute.

Escrow Account Provision

Under current law, an NPM makes escrow payments based on cigarettes sold in the settling state at a set amount per cigarette. The law permits an NPM to obtain a release of escrow funds “to the extent [the NPM] establishes that the amount it was required to place into escrow in a particular year was

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the [MSA] had it been a participating manufacturer." Section 895.10 (2) (b) 2., Stats.

Currently, Wisconsin's allocable share of total payments is about 2%. If an NPM concentrates sales in one or a few states, rather than selling cigarettes nationwide, the effect is that a relatively small portion of its escrow payments must remain in escrow.

Act 73 provides that an NPM is eligible for escrow refunds only when it can show that the amount put in escrow is more than it would have had to pay under the MSA for the number of cigarettes sold in Wisconsin, had it been a PM.

Enforcement

Act 73 contains several provisions intended to enhance the state's enforcement of the model escrow statute, including: (1) detailed certification of compliance requirements; (2) a requirement that an NPM establish an escrow account before selling cigarettes in the state and agree to local service of process; (3) a requirement that the Attorney General make available for public inspection a directory of all tobacco product manufacturers that are providing current and accurate certifications and a prohibition on cigarette sales by manufacturers not included in the directory; and (4) strengthening the ability of the Department of Justice and the Department of Revenue to cease sales and take other enforcement actions if escrow payments are not made.

Effective Date: Act 73 became effective November 27, 2003.

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