

ISSUE BRIEF

SENATE POLICY DEVELOPMENT AND RESEARCH OFFICE

PREPARED IN CONJUNCTION WITH THE SENATE REPUBLICAN POLICY COMMITTEE

The Tobacco Settlement

The Master Settlement Agreement

Pennsylvania has been receiving regular payments from tobacco manufacturers according to the terms of the \$206 billion Master Settlement Agreement (MSA)ⁱ and Consent Decree, arrived at between the 46 States and five territories who had filed suit, and the major tobacco manufacturersⁱⁱ. The MSA was agreed to on November 23, 1998, and was implemented by final Court Order on June 30, 2000.

In addition to providing for regular payments to the states, in compensation for expenses associated with tobacco use by their citizens, this Agreement also prohibited youth targeting, banned the use of cartoon characters for advertising, restricted sports or stadium sponsorship, banned placement of tobacco products in many film categories, and banned outdoor advertising. The Tobacco Enforcement Section of the PA Attorney General's Office monitors payment compliance, enforces advertising and marketing restrictions, and defends the MSA and other tobacco legislation against court challenges.

Pennsylvania's allocation of Tobacco Settlement monies is governed by Act 77 of 2001ⁱⁱⁱ, which dedicates 12% of the state's annual settlement payments to tobacco prevention and cessation programs. Act 77 further provides that funds from the MSA also go toward home and community-based care, hospital uncompensated care, medical assistance, and PACE and PACENet reimbursements, among others. The Commonwealth expects to receive approximately \$400 million annually, over 25 years, from the MSA^{iv}.

Controversy Arising out of Spending PA's MSA Funds

Overall, Pennsylvania's management of its MSA money has been highly regarded. Act 77 allocates the MSA funds roughly as follows: insurance for uninsured adults: 30%; health-related research: 19%; home and community-based care for seniors: 13%; tobacco prevention and cessation: 12%; hospital charity care: 10%; and, prescription drug assistance for seniors (PACENET): 8%.^v

While Pennsylvania is known as the only state dedicating 100% of its settlement funds to health-related programs^{vi}, there has been some isolated criticism of the statutory decision to spend "only" 12% of the MSA allocation on prevention and cessation programs. This amount will be less than the \$155.5 million that the U.S. Center for Disease Control recommends that we spend this year in those areas^{vii}. The organization which regularly raises this issue, and solicits editorial support around the Commonwealth, is the Campaign for Tobacco-Free Kids^{viii}.

In addition, beginning in February of 2006, Gov. Ed Rendell has repeatedly proposed the creation of the Jonas Salk Legacy Fund. The Governor's proposal would redirect half of the 19% currently devoted to funding medical research, around \$70 million, to make yearly payments on a \$500 million bond issue, and thus to dramatically increase state funding for medical research^{ix}. Further, Sen. Jake Corman introduced Senate Bill 800^x last session, to authorize the use of MSA funds for certain work for bioscience institutions or organizations within the jurisdiction of a regional biotechnology research center. These proposals have not to date been enacted into law.

Other Tobacco-Related Laws Generating Revenue

Tobacco Excise Tax:

First enacted in 1935; last changed from \$1.00 per pack to \$1.35 per pack on January 7, 2004^{xi}.

Criminal Penalties:

For sales of cigarettes to minors: \$100-\$250 first offense, \$250-\$500 second offense, \$500-\$1000 thereafter^{xii}.
For selling or distributing cigarettes without a license from the Dept. of Revenue: \$250-\$1000^{xiii}.
For noncompliant Internet sales: \$1000-\$10,000^{xiv}.

Possible Tobacco Revenue Measures

Non-cigarette tobacco products, such as smokeless tobacco and cigars, are not yet subject to the Tobacco Excise Tax in Pennsylvania. Senator Ted Erickson has indicated that he may soon introduce such a proposal. Governor Rendell, in February of 2007, proposed the imposition of such a new tax as part of that year's budget proposal, at a rate of 36 cents per ounce of smokeless tobacco, and 4 cents per cigar, as part of his "Prescription for Pennsylvania". The Governor alleged that this would raise approximately \$151 million of additional health care funding^{xv}. The legislature did not enact this proposal.

Summary of Information on Tobacco Use in Pennsylvania

There is general agreement on the following statistics as a summary of facts about tobacco use in the Commonwealth:

- High school students who smoke: 17.5%
- Children (under 18) who become new daily smokers each year: 18,400
- Children now under 18 and alive in Pennsylvania who may ultimately die prematurely from smoking: 300,000
- Adults in Pennsylvania who smoke: 21.0%
- Adults who die each year from their own smoking: 20,100
- Annual health care costs in PA believed to be caused by smoking: \$5.19 Billion^{xvi}.

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ⁱ <http://www.attorneygeneral.gov/uploadedFiles/Consumers/msa.pdf>

ⁱⁱ <http://www.tobacco.org/News/settlementresources.html>

ⁱⁱⁱ <http://ldpc6.legis.state.pa.us/WU01/LI/LI/US/HTM/2001/0/0077..HTM>

^{iv} <http://www.physiciansnews.com/cover/203.html>

^v <http://www.pactonline.org/docs/MSA%20Fact%20Sheet%20%204-08.pdf>

^{vi} <http://readingeagle.com/blog.aspx?bid=4&id=18824&t=Use-tobacco-money-to-help-break-habit>

^{vii} *Id.*

^{viii} <http://www.tobaccofreekids.org/index.php>

^{ix} <http://www.post-gazette.com/pg/06032/647455.stm> ; http://www.pittsburghlive.com/x/pittsburghtrib/s_502649.html ; <http://www.hacd.net/budget/200809/documents/BBTobacco022108.pdf>

^x <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2007&sessInd=0&billBody=S&billTyp=B&billNbr=0800&pn=0994>

^{xi} 72 P.S. Sec. 8206

^{xii} 18 Pa.C.S. Sec. 6305.

^{xiii} *See, e.g.*, the PA. Code sections imposing tobacco licensing requirements upon cigarette stamping agents, wholesalers, and retailers: <http://www.pacode.com/secure/data/061/chapter72/chap72toc.html> .

^{xiv} Act 176 of 2005, Sec. 231-A of the Fiscal Code.

^{xv} <http://www.post-gazette.com/pg/07057/765056-85.stm>

^{xvi} <http://www.tobaccofreekids.org/reports/settlements/state.php?StateID=PA>