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*Final Analysis*  
*Legislative Service Commission*

**Am. Sub. S.B. 242\***  
124th General Assembly  
(As Passed by the General Assembly)

**Sens. Carnes (By Request), Amstutz**

**Reps. Evans, Schmidt, Metzger**

**Effective date: June 19, 2002; certain provisions effective July 1, 2002, and September 19, 2002**

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**ACT SUMMARY**

- Creates two new funds in the state treasury, both funded from tobacco settlement money, to pay the Attorney General's costs of overseeing, administering, and enforcing the Tobacco Master Settlement Agreement and the Tax Commissioner's costs of enforcing reporting requirements for brands not covered by the Master Settlement Agreement.
- Creates two new funds in the state treasury for paying the state employees of the Tobacco Use Prevention and Control Foundation and the Southern Ohio Agricultural and Community Development Foundation.
- Imposes penalties on a wholesale or retail dealer that fails to timely file reports of the quantity of each brand of cigarette and roll-your-own cigarette tobacco that the dealer sells in Ohio that is not covered by the Tobacco Master Settlement Agreement.
- Adds two Senators and two Representatives to the governing bodies of the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural and Community Development Foundation, and Biomedical Research and Technology Transfer Commission.

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\* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission Fiscal Note for Am. Sub. S.B. 242 for an analysis of such provisions.*

- Modifies or eliminates limitations on the amounts of tobacco settlement money that the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural Community Development Foundation, Biomedical Research and Technology Transfer Commission, and their grantees may spend on administration.
- Modifies the Unfair Cigarette Sales Act with respect to the determination of a retailer's "cost of doing business" and a wholesaler's markup.
- Prohibits (1) the manufacture, sale, or distribution of any pack of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than 0.6 ounce of tobacco and (2) the sale of cigarettes in a smaller quantity than that placed in the pack by the manufacturer.
- Requires the Department of Aging to establish a toll-free telephone number to provide information on prescription drug assistance that is available in Ohio.

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## CONTENT AND OPERATION

### *Creation of four new tobacco settlement funds*

The act creates four new funds in the state treasury:

(1) The Tobacco Settlement Oversight, Administration, and Enforcement Fund, which the Attorney General is to use to pay costs incurred in the oversight, administration, and enforcement of the Tobacco Master Settlement Agreement. The Director of Budget and Management must determine the amount necessary to pay such costs and, in each year from 2003 to 2025, transfer the amount from the Tobacco Master Settlement Agreement Fund. The transfer is to occur after required transfers to the Education Facilities Trust Fund and the Education Facilities Endowment Fund have been made but before other required transfers from the fund are made. (R.C. 183.02(I) and 183.34.)

(2) The Tobacco Settlement Enforcement Fund, which the Tax Commissioner is to use to pay costs incurred in enforcing a requirement the act imposes on tobacco dealers regarding reporting information on brands not subject to the Tobacco Master Settlement Agreement (see below under "*Penalties for failing to timely file certain tobacco tax returns*"). Here too, the Director of Budget and Management must determine the amount necessary to pay such costs and, in each year from 2003 to 2025, transfer the amount from the Tobacco Master

Settlement Agreement Fund. The transfer is to occur after required transfers to the Education Facilities Trust Fund and the Education Facilities Endowment Fund have been made but before other required transfers from the fund are made. (R.C. 183.02(J) and 183.35.)

(3) The Tobacco Use Prevention and Control Operating Expenses Fund, to be used solely to pay the compensation of the state employees of the Tobacco Use Prevention and Control Foundation. Periodically the Treasurer of State is to pay into the fund, from the Tobacco Use Prevention and Control Endowment Fund (a custodial fund of the Treasurer of State, which is not part of the state treasury), amounts requested by the Foundation to pay such compensation. All investment earnings of the new fund are to be credited to it. (R.C. 183.06.)

(4) The Southern Ohio Agricultural and Community Development Operating Expenses Fund, which is to be used solely to pay the compensation of the state employees of the Southern Ohio Agricultural and Community Development Foundation. Here too, the Treasurer of State is to pay into the fund periodically, from the Southern Ohio Agricultural and Community Development Foundation Endowment Fund (a custodial fund of the Treasurer of State), amounts requested by the Foundation to pay such compensation. All investment earnings of the new fund are to be credited to it. (R.C. 183.14.)

#### **Transfers from the Master Settlement Agreement Fund in 2013 and 2014**

Ongoing law requires the Director of Budget and Management, from amounts credited to the Tobacco Master Settlement Agreement Fund in FY 2013, to transfer to the Tobacco Use Prevention and Cessation Trust Fund, the Southern Ohio Agricultural and Community Development Trust Fund, and Ohio's Public Health Priorities Trust Fund, the amount *not* transferred to each such fund from the Master Settlement Agreement Fund in FY 2002 due to Am. Sub. H.B. 405 of the 124th General Assembly. Likewise, the Director is to transfer to those funds, from the amounts credited to the Master Settlement Agreement Fund in FY 2014, the amount *not* transferred to each such fund from the Master Settlement Agreement Fund in FY 2003 due to Am. Sub. H.B. 405.

The act requires the transfer to those funds, from the Master Settlement Agreement Fund in FY 2013 and FY 2014, respectively, the amounts *not* transferred to each such fund in FY 2002 and FY 2003 due to the H.B. 405 provisions as modified by the act. (See the Legislative Service Commission Fiscal Note for Am. Sub. S.B. 242 for a description of the modifications.) (R.C. 183.02(A)(2), (C)(2), and (D)(2).)

### **Penalties for failing to timely file certain tobacco tax returns**

The act requires each wholesale or retail dealer that must pay cigarette or other tobacco product taxes to the state to report to the Tax Commissioner the quantity of each brand of cigarette and roll-your-own cigarette tobacco that the dealer sells in Ohio that is not covered by the Tobacco Master Settlement Agreement. The report must be made on a form prescribed by the Commissioner and filed monthly (unless the Commissioner authorizes less frequent reporting because the quantity does not warrant monthly reporting).

The act imposes a penalty of not more than \$250 for each month or portion of a month that the person fails to timely file the report and allows the sum to be collected by assessment. It also provides that a person failing to file the report at all is guilty of a misdemeanor of the fourth degree. (R.C. 5743.03 and 5743.99.)

### **Foundations and Commission**

#### **Membership of governing bodies**

The act adds two Senators and two Representatives to the governing bodies of the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural and Community Development Foundation, and Biomedical Research and Technology Transfer Commission. For each governing body, the Speaker of the House of Representatives is to appoint one House member of the political party of which the Speaker is a member and one House member of the major political party of which the Speaker is not a member. Likewise, the President of the Senate is to appoint one Senate member of the political party of which the President is a member and one Senate member of the major political party of which the President is not a member. These legislative members are to serve as nonvoting members for terms of office consisting of the biennial session of the General Assembly in which they are appointed. (R.C. 183.04, 183.12, and 183.20.)

#### **Limitations on spending tobacco settlement money on administration**

Under ongoing law, the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural and Community Development Foundation, and Biomedical Research and Technology Transfer Commission are each prohibited from spending on their administrative expenses more than 5% of their total expenditures in a fiscal year. However, in FY 2001 and FY 2002, the foundation or commission has been allowed to spend more than that amount if it has submitted a spending plan to the Controlling Board that the Board has approved. The act extends the Controlling Board exception to all future fiscal years. (R.C. 183.30.)



The act eliminates altogether the prior limit of 10% on the amount that could be spent on administrative expenses (1) from Tobacco Use Prevention and Control Foundation funding by a public or private agency, (2) from a Southern Ohio Agricultural and Community Development Foundation grant or loan by an individual, public agency, or privately owned company, or (3) from a Biomedical Research and Technology Transfer Commission grant by an individual, public agency, private company or organization, or joint venture (repealed R.C. 183.31).

### **Unfair Cigarette Sales Act**

#### **Determination of a retailer's "cost of doing business"**

Under the Unfair Cigarette Sales Act (R.C. 1333.11 to 1333.21), a retailer is prohibited from advertising, offering to sell, or selling at retail cigarettes at less than cost to the retailer, with the intent to injure competitors, or destroy substantially or lessen competition. The definition of "cost to the retailer" includes, among other things, the retailer's cost of doing business as evidenced by the accounting methods regularly employed by the retailer in the allocation of overhead costs and expenses. In the absence of proof of a lesser or higher cost of doing business by a retailer, the "cost of doing business" is generally considered to be **6%** of the invoice cost of the cigarettes to the retailer, or of the replacement cost of the cigarettes to the retailer, whichever is lower.

The act increases that percentage to **8%**. (R.C. 1333.11(B).)

#### **Determination of a wholesaler's markup**

The Unfair Cigarette Sales Act also prohibits a wholesaler from advertising, offering to sell, or selling at wholesale cigarettes at less than cost to the wholesaler, with the intent to injure competitors, or destroy substantially or lessen competition. The definition of "cost to the wholesaler" includes a wholesaler's markup, which is to be added to cover in part the cost of doing business. In the absence of proof of a lesser or higher cost of doing business by the wholesaler as evidenced by the accounting methods regularly employed by the wholesaler in the allocation of overhead costs and expenses, the wholesaler's markup is generally considered to be **2.5%** of the invoice cost of the cigarettes to the wholesaler, or of the replacement cost of the cigarettes to the wholesaler, whichever is lower.

The act increases that percentage to **3.5%**. (R.C. 1333.11(C).)

#### **Effective date**

The act's modifications to the Unfair Cigarette Sales Act take effect July 1, 2002 (Section 24).



**Illegal distribution of cigarettes or other tobacco products**

The act prohibits any manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes; any agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes; and any other person from doing either of the following:

(1) Manufacturing, selling, or distributing in Ohio any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than 0.6 ounce of tobacco;

(2) Selling cigarettes in a smaller quantity than that placed in the pack or other container by the manufacturer.

A violation of this prohibition is a misdemeanor of the fourth degree and, on any subsequent offense, a misdemeanor of the third degree. (R.C. 2927.02.)

**Prescription drug assistance information**

The act requires the Department of Aging to develop a program to establish a toll-free telephone number to provide information on prescription drug assistance that is available in Ohio. The department must seek private funding to complement any state funds used for the program, and cannot begin spending money on the program until obtaining Controlling Board approval of its planned use of the funds. (Section 18.)

**Correction**

The act corrects an erroneous cross reference that appeared in the original Tobacco Settlement Appropriations Act (Am. Sub. S.B. 192 of the 123rd General Assembly). (R.C. 126.02.)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	02-26-02	p. 1509
Reported, S. Finance & Financial Institutions	03-13-02	pp. 1573-1574
Passed Senate (29-4)	03-13-02	pp. 1576-1578
Reported, H. Finance & Appropriations	03-21-02	p. 1628

Passed House (89-1)	03-21-02	pp.	1628-1643
Senate refused to concur in House amendments (0-32)	04-24-02	pp.	1705-1706
House requested conference committee	04-25-02	p.	1724
Senate acceded to request for conference committee	04-26-02	p.	1739
Senate agreed to conference committee report (28-3)	05-30-02	pp.	1873-1881
House agreed to conference committee report (80-13)	05-30-02	pp.	1876-1885

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