

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Eighth Session
February 26, 2015**

The Committee on Taxation was called to order by Chairman Derek Armstrong at 1:30 p.m. on Thursday, February 26, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Derek Armstrong, Chairman
Assemblyman Randy Kirner, Vice Chairman
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Olivia Diaz
Assemblywoman Jill Dickman
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman John Hambrick (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Bryan Fernley, Committee Counsel
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Hillary A. Bunker, Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General
Marcus Conklin, representing the Reno/Sparks Indian Colony
Bryan Wachter, representing the Retail Association of Nevada
Michael Hackett, Principal, Alrus Consulting

Chairman Armstrong:

[Roll was called and housekeeping items discussed.] Today on the agenda we have a presentation from the Office of the Attorney General, as well as a bill hearing. At this time I would like to call up the Office of the Attorney General for their presentation.

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General:

I am here on behalf of Nevada Attorney General Adam Laxalt. We appreciate the opportunity to provide you an update on the Master Settlement Agreement (MSA). To my right is Deputy Attorney General Hillary Bunker. She is the head of our Tobacco Enforcement Unit, and one of the bright young attorneys in our office. I am going to turn it over to Ms. Bunker to provide you the overview ([Exhibit C](#)).

Hillary A. Bunker, Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General:

What I have here ([Exhibit C](#)) is a brief introduction to the Master Settlement Agreement (MSA). The background of the MSA comes from the late 1990s. There were several states that sued major tobacco companies to recover Medicaid costs and other damages for tobacco-related health care. In 1998, 46 states, Washington D.C., and 5 territories signed the tobacco Master Settlement Agreement with four of the original participating manufacturers. Four states did not sign the agreement. Those were Florida, Texas, Minnesota, and Mississippi. The question I get frequently is, when does the MSA end? The answer is that there is no end date, ever, for the MSA.

Chairman Armstrong:

We have heard in other committees that these funds eventually go away. Will they be reduced at any point, or is it perpetual?

Hillary Bunker:

The contract does not end. What we have seen already is a decrease in the payments that all the states are getting. It is based on cigarettes sales. One of the main factors in that is that electronic cigarettes (e-cigarettes) are not included in the MSA. As the sales of e-cigarettes go up, if the sales of traditional cigarettes go down, it will affect the tobacco money that will be going to the states. Our projections over the next few years have shown a decrease, but for the contract itself, there is no term end date.

Assemblyman Hickey:

In other words, the fact that it is never going to end means it really was not a settlement. Would you characterize this as almost an ongoing additional tax on the tobacco industry? I am just wondering if a certain agreement or settlement was reached. That to me demonstrates there was some decision or end to it. Why is it permanent? How would you characterize its continuation?

Hillary Bunker:

You can look at it as a type of contract. The reason it was defined as a settlement in 1998 was that it settled out certain terms. Any of the states that signed and had pending lawsuits against the tobacco companies released those claims. As part of the agreement, they agreed not to bring claims on behalf of their own state going forward, so it was a settlement in that the tobacco companies would pay and at that time states would release any current litigation or any future litigation. That is why it was characterized that way.

Assemblyman Trowbridge:

Does the use of cigarettes also include marijuana cigarettes?

Hillary Bunker:

It does not, only those referred to as traditional tobacco cigarettes.

Assemblyman Trowbridge:

Are these types of issues going to be introduced in the section that provides for that, so we can tax everything associated with the business?

Hillary Bunker:

As far as marijuana?

Assemblyman Trowbridge:

You bet.

Hillary Bunker:

It is not addressed in this bill. It is not something that we are presenting at this point.

In the first term of the MSA (page 3, [Exhibit C](#)), there were restrictions placed on the tobacco companies. This was focusing on youth smoking, so the companies were prohibited from targeting youth by using cartoons. There were limitations placed on brand name sponsorships where there were events popular with youth.

The second part was an overall advertising and sponsorship limitation by the tobacco companies. This was limiting outdoor advertising, in terms of billboards. It was banning brand-name sponsorship in general for all sporting activities, tobacco brand-name merchandise, free samples of cigarettes to anyone, and then misrepresenting health consequences of smoking.

The third point, which I covered briefly, was that the states that signed the MSA agreed to release the tobacco manufacturers if they had claims pending, or in the future for any cost that would arise out of tobacco-related health care. Individuals are still permitted in any state to file a lawsuit against a tobacco company. This is just limited to the states filing lawsuits on behalf of their own citizens.

Last, the big part was that the tobacco companies would make yearly payments to the signatory states.

The parties to the MSA (page 4, [Exhibit C](#)), as mentioned, were the 46 states that signed, the 5 territories, and Washington D.C. The original participating manufacturers were Philip Morris, R. J. Reynolds, Lorillard, and Brown and Williamson. Since 1998 we have had more than 40 other manufacturers sign on to the MSA.

How Nevada fits into this (page 5, [Exhibit C](#)) is that we receive roughly \$40 million every year as our share of the MSA payment. As you are probably aware, of that money, 40 percent goes to fund the Governor Guinn Millennium Scholarship Program and 60 percent goes to the Fund for a Healthy Nevada. There are some other costs associated with enforcement of the MSA that were taken out of the payment.

Although you have 40-plus companies that signed on to the MSA, you still have tobacco companies out there that are not party to the original agreement. We refer to these as non-participating manufacturers (NPM) (page 6, [Exhibit C](#)). There needed to be an even playing field for the tobacco companies that signed on, compared with the companies that did not sign on and did not have the same restrictions.

The non-participating manufacturers do not make annual payments to the state through the MSA, but their activity is regulated by statute. They are required to track their cigarette sales and make escrow deposits each quarter based on how many cigarettes they sell in the state. These escrow deposits are left in bank accounts, to be returned to the tobacco company at the end of 25 years, unless the state obtains a judgment against the company, in which case it can be released.

The difference is that, for non-participating manufacturers, the State of Nevada could sue for tobacco-related health costs against those companies, but not against the companies that actually signed the MSA.

Recent arbitration between the states and the tobacco companies has reinforced that states have to be diligently enforcing the terms of the MSA. The term "diligent enforcement" is not defined anywhere, but the arbitration has revealed that it includes working with the Department of Taxation on tobacco-related issues, having reliable accounting figures, allocating resources to enforcement enacting legislation, working with the National Association of Attorneys General, among other efforts to enforce it deeply (page 7, [Exhibit C](#)).

The Tobacco Enforcement Unit (page 8, [Exhibit C](#)) of the Attorney General's Office covers MSA enforcement and makes sure that all the tobacco-related companies active in our state follow both state and federal law. We also run the youth compliance program for Nevada, where undercover stings are performed to see if retailers are selling tobacco to underage youth. We regularly work with the Department of Taxation on tobacco related issues, accurate reporting of numbers that come in, performing background checks for businesses wishing to operate in the state, and answering general questions they have.

The last slide (page 9, [Exhibit C](#)) has contact information for me. I work out of the Carson City office. If you have any questions about the MSA or tobacco, or after this hearing if you have something you would like to discuss, feel free to give me a call or email me.

Chairman Armstrong:

Thank you for your presentation.

Assemblyman Kirner:

I have a Millennium Scholarship bill this session. Regarding the 40 percent that goes to the Millennium Scholarship, I am curious if you have a sense of what the numbers look like, in round numbers?

Hillary Bunker:

I met with the Office of the State Treasurer recently and the figure we provided them is staying around \$40 million. It is going to drop a little bit over the next couple of years. This is just projected, but we are looking at a total payment [not just the portion going to the scholarship fund] of somewhere between \$36 and \$40 million. Up through about 2018 is how far out the National Association of Attorneys General predicts.

Assemblyman Kirner:

So on the next biennium basis, about how much would that be?

Hillary Bunker:

We are looking again at a total payment of about \$39 million.

Assemblyman Kirner:

Good number.

Hillary Bunker:

Yes. This Friday we will get the preliminary figures and April 15 is when the actual payment will be distributed.

Assemblywoman Kirkpatrick:

I have been here for the last five sessions. I think it would be helpful for this group to know that last session we had to figure out how to count the cigarettes and include the Native American groups in the process. The session before that we had to set up the process to go in and get it. I think it would be very helpful for this group to know all the steps we have had to go through.

In my recollection we joined this Master Settlement Agreement (MSA), but it is always changing. It is a big document with hundreds of pages. Pages 1 through 50 have been settled, and this is what we have to do. Pages 50 through whatever have been settled. We are always having to make changes until it is completely finished. The end result is that those dollars are going to go away. I believe we said that would be in 2017, if not 2020—it was going to

come to an end because we had been receiving so much and that is why the payments are less.

I think it would be helpful for this group to know, at least for the last three or four sessions, what we have accomplished. We could not address the manufacturer piece last time because it was still held up, and six states had not decided if we were going to go in that direction. This time, I think this bill is protecting us from all the other people who are not part of that agreement, so we ensure that within our state we are counting every single cigarette exactly right, and we know who the manufacturers are, because we see a lot of folks coming and going. Is that a fair estimate of what this bill is trying to do this time, because that was a big piece of how we count the cigarettes and how we identify the manufacturers? Is that a fair estimate on this, and would it be something that you could do for us, to get a timeline on how the settlement has worked out, at least for the last ten years?

Hillary Bunker:

I think that is something our office could definitely put together, in terms of what legislation has been enacted and what has changed since the 1998 settlement. The MSA itself has not changed since the 1998 settlement signing, but what has changed, as I mentioned briefly, is the arbitration. It was brought by the big tobacco companies against all of the states actually, so the last couple legislative sessions have been related to things that arose in that arbitration and things that we realized we needed to be doing or that every state as a whole needed to implement.

I think that is something that we could put together. We could even go back to 1998 and see what has been done since then, with a brief reason as to what legislation was presented and why it passed.

Assemblywoman Kirkpatrick:

Thanks. I feel as though there is probably going to be another discussion next session, so at least we might have something historical on record.

Assemblyman Nelson:

In 1998 there obviously were no e-cigarettes, and I thought you said the e-cigarettes are not part of this, but are the e-cigarettes generally manufactured by the same parties to the agreement, or is that even on your scope?

Hillary Bunker:

It is, and it is a mix. You have the large tobacco companies that have their brand of e-cigarettes, and some of the non-participating manufacturers are selling them. Then you have some companies who fit into no traditional

tobacco company and have started manufacturing them because they are popular right now, so it really is a mix of all parties.

Assemblyman Hickey:

Could you clarify for me a couple of different statements we have heard? We frequently hear, as was mentioned, that the money may be coming to an end and that will affect the Governor Guinn Millennium Scholarship Program within a couple of years, yet your report stated that this will go on in perpetuity. Why is it that we have interpreted it such that we may not be able to continue with the money for the Millennium Scholarship?

Hillary Bunker:

I think the confusion comes from two different points. One point is that there was a strategic contribution that was part of the original MSA and was going to be paid out for a term of 20 years. That portion comes to an end in 2018. I want to say it is approximately \$4 million that has been part of the settlement since it was signed. That is one point where people hear that part of the money is going away, and that has always been anticipated. The second point of confusion comes from these non-participating manufacturers, because when they deposit money into their own accounts, it goes back to them after 25 years. So a lot of what I hear is that the MSA ends after 25 years. It is confusing because you have the parties that did not sign the MSA but are somewhat regulated by it, but each state regulating them. They are monitored and have laws to follow, and they get their money back. For example, if they paid in 2001, in 2026 they would get that year's payment back. The payback is 25 years from the year they deposited it. That is separate from the MSA money we get from the big tobacco companies that are part of that settlement agreement.

Chairman Armstrong:

Are there any other questions? [There were none.] With that, I will close the presentation on the tobacco Master Settlement Agreement. We will open up the hearing on Assembly Bill 83.

Assembly Bill 83: Revises provisions relating to tobacco. (BDR 32-175)

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General:

We are appreciative of the opportunity to present Assembly Bill 83 to you today. As it was just detailed, in exchange for the receipt of the annual tobacco Master Settlement Agreement (MSA) payments, the state must demonstrate diligent enforcement in both regulation and the enforcement of the manufacture and sale of tobacco products in our state. Assembly Bill 83 is brought for your consideration in furtherance of our diligent enforcement efforts.

I will once again turn it over to Ms. Bunker to provide you further detail on the text of A.B. 83.

Hillary A. Bunker, Deputy Attorney General, Office of the Attorney General:

As I mentioned earlier, we have entered into the MSA, and we are getting approximately \$40 million each April for enforcing the terms of the MSA. This goes to the Fund for a Healthy Nevada and the Governor Guinn Millennium Scholarship Program. Receipt of any future tobacco payments is vital to the continued existence of both of those programs for Nevada.

The cornerstone of *Nevada Revised Statutes* (NRS) Chapter 370A is the requirement that the cigarette manufacturers either sign the MSA and make annual payments; or, if they do not sign it, they are required to deposit funds into an escrow account for each cigarette. These are the non-participating manufacturers.

If we are found at some point to have not diligently enforced any of our provisions, all of our annual payment from MSA is on the line. As I mentioned, we have been involved in arbitration. We currently have a settlement agreement out that covers the years 2003 to 2013 for diligent enforcement.

With regard to the bill at hand, sections 2, 5, 7, and 9 expand the statutory definition of "manufacturer" to provide for the licensing and regulation of persons manufacturing cigarettes using commercial grade rolling machines, which are commonly referred to as Roll Your Own, or RYO machines. These are commercial grade machines where the paper and loose tobacco are inserted into the machine. Output is generally one pack of cigarettes per minute. The rolled cigarettes that come from the RYO machines avoid taxes placed on cigarettes and payments owed as manufacturers under the MSA.

Since 2012, under federal law a person who uses a commercial grade RYO machine has to obtain a manufacturing permit from the U.S. Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau. Nevada currently does not mirror federal law with regard to RYO machines, and Nevada law enforcement officers do not have a mechanism in place to bring the RYO operators in compliance with Nevada law. We know that there are still active commercial RYO machines operating in Nevada. Many operate at social clubs, where membership dues must be paid prior to having the cigarettes rolled.

What this bill does is create an additional definition of "manufacturer" to include the persons owning, maintaining, operating, or permitting others to operate a commercial grade RYO machine. This amendment would allow Nevada

investigators to inspect the establishments operating these machines, and to seize equipment if it is not in compliance with state law. The licensing requirement only applies to commercial grade machines, and it excludes smaller machines, such as those used at private residences for personal consumption.

Sections 3 and 10 of the bill create an exception to the business license requirement for tobacco companies that are required by law to maintain a registered agent in the state, but otherwise have no contacts.

Under NRS 370.680, tobacco manufacturers are required to either register as a foreign corporation or other business entity, or appoint a registered agent in the state; however, under NRS 76.100, section 6, a person is deemed to be conducting business in Nevada if he has a registered agent. So we have a conflict between those two statutes, where NRS 370.680 allows them to just have a registered agent and NRS 76.100 actually requires a business license if they have a registered agent in the state.

These would compel tobacco manufacturers to obtain a Nevada business license because they have a registered agent, even though they actually have no contacts with the state, including physical buildings or employees.

Our proposed change is directed at the tobacco manufacturers that only have a registered agent in the state, because they are required to do so under NRS 76.100, section 6. These manufacturers are out of state, and they work with distributors or importers to ship their product into the state. It is the distributors and importers that will actually still require a business license.

Some of the tobacco manufacturers themselves actually distribute and/or import product, in which case they currently hold a business license and would not be exempt. This exception is for people who reside out-of-state, manufacture tobacco products, and do not bring them into the state themselves.

I know that we have an amendment ([Exhibit D](#)) to section 3 of the bill; the current citation references federal tobacco law, but it is more appropriate to cite NRS 370.680, as this is the statute in direct conflict with NRS 76.100.

[[Exhibit E](#) was presented but not discussed, and is included as an exhibit for the meeting.]

Chairman Armstrong:

One of the questions I have is for section 2 and whether or not we are matching federal law for creating a definition. It seemed to me we were defining commercial grade as anything that uses anything other than human power.

What I am wondering is, is it a federal issue that any electric-powered cigarette ROY machine is deemed commercial grade?

Hillary Bunker:

That is something that I could look into for you, the exact federal definition. I do not believe that ours mirrors it exactly, but it is something that I can look at and let you know. I think that we made the distinction because we were trying to eliminate those rolling machines people have in their own homes, so that they are not then forced to register as a manufacturer. I can check on the terminology and see exactly how the federal law is defined versus what we have in section 2.

Chairman Armstrong:

I see that this may be an issue for elderly individuals who are used to rolling their own cigarettes, and wonder if we are taking that ability away from them. Are there any other questions? [There were none.] At this time I will close the questions and open it for testimony. Is there anyone who wants to speak in support of A.B. 83.

Marcus Conklin, representing the Reno/Sparks Indian Colony:

I am with Strategies 360, representing the Reno/Sparks Indian Colony today. On behalf of the Colony, we are in support of A.B. 83, specifically as written. I have not had a chance to confer with my client on the amendment, but I think we will be in the affirmative on that as well.

Bryan Wachter, representing the Retail Association of Nevada:

I echo the comments of Mr. Conklin. We appreciate the Attorney General's office looking into making sure the statutes remain fair, and that they are solving the intent for which they were originally written. We look forward to supporting and seeing this legislation pass.

Michael Hackett, Principal, Alrus Consulting:

I am with Alrus Consulting. I am here on behalf of the Nevada Tobacco Prevention Coalition. We support A.B. 83. We believe that A.B. 83 will increase fairness and provide tax parity among tobacco products and for tobacco manufacturers. As a tobacco control coalition, we also understand that tobacco policies that favor one tobacco product over another can influence tobacco use. We also feel that A.B. 83 will help to minimize that.

Chairman Armstrong:

Is there anyone else wanting to speak in support of A.B. 83? Seeing none, is anyone neutral on A.B. 83? Seeing none, would anyone like to speak in opposition to A.B. 83? Seeing none, I will close the hearing on A.B. 83.

That is the last item on our agenda. At this point I will open up the floor for public comment. Would anyone like to speak for public comment? Seeing none, I will close public comment. We are adjourned [at 1:57 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblyman Derek Armstrong, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: February 26, 2015

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Hillary A. Bunker, Office of the Attorney General	PowerPoint Presentation
A.B. 83	D	Hillary A. Bunker, Office of the Attorney General	Amendment
A.B. 83	E	Office of the Attorney General	Letter of Support