HB 3461 A STAFF MEASURE SUMMARY

Carrier: Sen. Boquist

Senate Committee On Rules

Action Date:	06/28/17
Action:	Do pass the A-Eng bill.
Vote:	5-0-0-0
Yeas:	5 - Beyer, Boquist, Burdick, Ferrioli, Roblan
Fiscal:	Has minimal fiscal impact
Revenue:	Revenue impact issued
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WHAT THE MEASURE DOES:

Provides Oregon Department of Justice (DOJ) increased enforcement authority over contraband cigarette sales in conjunction with Nonparticipating Manufacturer (NPM) Adjustment Settlement related to Tobacco Master Settlement Agreement (MSA). Imposes joint and several liability on importer and NPM for violation of escrow provisions. Requires NPM to post bond to secure escrow obligations. Enhances certification requirements. Allows for sharing of information between DOJ, Oregon Department of Revenue, and other federal, state, or local agencies to enforce MSA. Prohibits sales of cigarettes and smokeless tobacco products via mail, telephone, or electronic network. Authorizes execution of investigative demand by DOJ. Allows for civil penalties. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- History of MSA
- Participation in NPM Adjustment Settlement
- Additional enforcement mechanisms for illegal cigarette sales
- Fire safe cigarette rules
- Ban on cigarettes and smokeless tobacco products purchased on Internet

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

On November 23, 1998, Oregon joined 45 other states (“Settling States”) and the four largest domestic tobacco manufacturers ("Original Participating Manufacturers" or OPMs: Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Lorillard Tobacco Company) to end a four-year legal battle over past, present and future smoking-related claims by executing the Tobacco Master Settlement Agreement (MSA).

The MSA resolved all state claims against the tobacco industry to recover state healthcare costs associated with treating smoking-related illnesses that were brought as unlawful trade practices, antitrust violations, consumer protection actions, or at common law. In exchange, the OPMs agreed to restrictions on advertising and marketing, and to make annual payments to the Settling States in perpetuity beginning in 2000.

There were a number of smaller tobacco companies that elected not to participate in the MSA. These companies are referred to as nonparticipating manufacturers (NPMs). The MSA requires Settling States to enact and diligently enforce a “Qualifying Statute” (QS) that requires NPMs to pay a sum into an escrow account each year based on sales. Oregon enacted its QS in 1999; NPMs generally represent two percent or less of Oregon’s cigarette market share with the rest comprised of sales by the OPMs. If a nationwide arbitration panel determines that a state did not "diligently enforce” its QS in a given year, that state can lose up to the full amount of its MSA payment for that year. This is called the NPM Adjustment.

In 2003, Oregon's diligent enforcement came into question and went to arbitration, but did not conclude until 2013, when the arbitration panel determined that the QS had been diligently enforced. The disputed funds for 2003 were returned to Oregon in April 2014. However, because determinations about whether a state is subject to the NPM Adjustment are made on a year-by-year basis, Oregon still faced protracted litigation regarding diligent enforcement of its QS from 2004 forward. Given the time and costs associated with each arbitration and the constant uncertainty about the potential impact on Oregon's budget, Oregon recently joined a multistate settlement of the NPM Adjustment, aptly called the NPM Adjustment Settlement. The NPM Adjustment Settlement resolves pending litigation, eliminates the risk of Oregon losing its entire MSA payment for sales years from 2004 to 2014, reduces the risk of MSA payment loss from 2015 forward, and returns $60 million in withheld funds to Oregon.

As part of the NPM Adjustment Settlement, Oregon agreed to work to broaden its enforcement responsibilities with respect to illegal cigarette sales. House Bill 3461-A fulfills that agreement by providing the Oregon Department of Justice (DOJ) with additional enforcement tools: it makes an importer jointly and severally liable with the manufacturer for escrow fund deposits and any penalties imposed for violating the escrow requirements; it requires NPMs to post a bond to secure escrow obligations and allows DOJ to execute on the bond to recover delinquent escrow payments, civil penalties, and costs; it requires all manufacturers whose cigarettes are directly or indirectly sold in Oregon to submit certification applications to DOJ annually and specifies additional information to be disclosed; it allows information-sharing between DOJ, the Oregon Department of Revenue, other state and federal enforcement partners, and a data clearinghouse; and it bans Internet sales of cigarettes and smokeless tobacco products.