



Ninety-Eighth Legislature - Second Session - 2004
Introducer's Statement of Intent
LB 944

Chairperson: Jim Jensen
Committee: Health and Human Services
Date of Hearing: January 23, 2004

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The purpose of LB 944 is to amend the model escrow act, specifically Neb. Rev. Stat. §69-2703, which was enacted following the signing of the Tobacco Master Settlement Agreement (MSA). Specifically, what is known as the “Allocable Share Release” provision of the model escrow act, Neb. Rev. Stat. § 69-2703(2)(b)(ii), would be amended to eliminate an unintended consequence of the original language. The amendment is necessary to accomplish a fundamental purpose of the model escrow act which is to ensure that companies with whom the state has not settled potential claims (Non- Participating Manufacturers or NPMs) are required to post escrows that provide a meaningful fund from which the state can recover damages in the event it obtains a judgment. The amendment also eliminates unintended disparities in the obligations of NPMs.

The model escrow act requires NPMs to make escrow deposits at a statutory rate or a fixed number of cents per “unit sold”. The statutory rate was calculated to approximate the MSA payment on a per-stick basis. However, the “Allocable Share Release” provision currently permits an NPM to obtain an early release of escrow “to the extent that a tobacco product manufacturer establishes that the amount it was required to place in escrow in a particular year was greater than the State’s allocable share of the total payments that such manufacturer would have been required to make in that year under the MSA”. The original purpose of this provision was to make sure that the financial obligations on the NPMs were not more onerous than the burdens on participating manufacturers joining the MSA which might provide the basis for an equal protection challenge to the model escrow act. However, as a practical matter the “Allocable Share Release” has had a dramatic and material affect on the obligations of some NPMs and has itself been the focus of constitutional objections. Because the “Allocable Share Release” as currently written focuses on a state’s allocable share of the MSA payments, experience has demonstrated that those NPMs that concentrate their sales in a single state or a few states, particularly a few states with small allocable shares of the total MSA payments (like Nebraska), can obtain a refund of the vast majority of their NPM deposits. The “Allocable Share Release” amendment proposed in LB 944 still allows a refund if the NPM can establish that it deposited more into a qualified escrow account than it would have paid under the MSA but

deletes all reference to the allocable share of a particular state. Thus the amendment would avoid the unjustified and inequitable refunds in the current “Allocable Share Release” provision.

As stated, the current language in §69-2703 has enabled NPMs depositing funds into escrow to get large releases or refunds of the money deposited. As a result NPMs have been able to sell cigarettes very cheaply which appeals to youthful smokers. Additionally, with cheap prices the NPMs have been able to increase their market share of cigarettes sold which results in reduced payments to the states by participating manufacturers under the MSA. The amendment proposed in LB 944 is also intended to stabilize the MSA payments to the states and reduce the availability of cheap cigarettes appealing to minors.

Principal Introducer:

_____ **Senator Jim Jensen**