



MASTER SETTLEMENT AGREEMENT RESTRICTIONS ON TOBACCO COMPANY LOBBYING EFFORTS

The Master Settlement Agreement (MSA) states that the tobacco companies cannot take any action that would “preempt, override, abrogate, or diminish” any state’s rights or recoveries under the agreement. [Section III.(m)]

This language bars the tobacco companies (or their lobbyists, front groups, etc.) from taking any action to reduce their payments to the states or to invalidate any of the marketing restrictions in the MSA. But it does not bar them from interpreting the MSA in a way that is most favorable to the tobacco industry or from trying to get the courts to adopt such favorable interpretations.

“[N]o participating manufacturer may support or cause to be supported (including through any third party or Affiliate) the diversion of any proceeds of this settlement to any program or use that is neither tobacco-related nor health-related in connection with the approval of this Agreement or in any subsequent legislative appropriation of settlement proceeds.” [III.(n)]

It is important to note that this lobbying restriction does not seem to stop the tobacco companies from working to direct settlement proceeds away from any particular tobacco control proposal so long as they do so by working to direct the monies toward some other alternative health-related proposals or uses, including any that have nothing to do with tobacco control. The cigarette companies might also argue that this language does not stop the companies from working to divert settlement funds from effective forms of tobacco control to other less-effective forms. But the pro-tobacco-control spirit of the language is clear, and it could still be quoted effectively to attack any cigarette company lobbying that interferes with efforts to allocate settlement funds to effective tobacco prevention efforts. While it may be a difficult argument to make, it might also be possible to persuade state attorneys general to use this language to try to block tobacco company efforts to direct settlement funds to so-called tobacco control efforts that can be shown to be extremely ineffective (which could be seen as the same thing as directing funds to a purpose other than tobacco control or health promotion).

The participating manufacturers cannot “oppose or cause to be opposed (including through any third party or Affiliate)” the passage of any state law or rule that “prohibiting the manufacture and sale of any pack or other container of Cigarettes containing fewer than 20 Cigarettes.” [III.(k)]

The tobacco companies are also forbidden from directly or indirectly (including through third parties or any affiliate) opposing or causing to be opposed any state or local legislative or administration action regarding any of the following [III.(m); Exhibit F]:

- ***limitations on youth access to vending machines***
- ***inclusion of cigars in the definition of tobacco products***
- ***enhancement of enforcement of laws forbidding sales to minors***
- ***enforcement of youth access through youth penalties***
- ***limiting promotional programs for non-tobacco goods that use tobacco products as prizes or giveaways***
- ***limitations on tobacco product advertising in or on school facilities or wearing tobacco logo merchandise on school property***
- ***limitations on non-tobacco products designed to look like tobacco products.***

But the tobacco companies may still oppose any legislation that includes these measures if it also includes other measures that are not on the list. And they may still seek injunctive relief or otherwise challenge the enforcement of any of the measures within the listed categories if and when they are ever

implemented. *The settlement agreement also explicitly confirms that the tobacco companies remain free to oppose any tobacco tax increases or any non-listed measures.* [III.(m)]

Application to Some Preemption Efforts. Because these lobbying restrictions block the tobacco companies from opposing certain kinds of both state *and local* legislation or administrative actions, the short list of prohibited lobbying topics (above) might prohibit tobacco industry lobbying for some tobacco-control preemption proposals. If the scope of the preemption language is broad enough to block the kinds of local legislation or administrative action the companies are forbidden to oppose, the tobacco industry's support for the new preemption proposal could be characterized as opposing such legislation and, therefore, violating the MSA's lobbying restrictions.

New Procedural Requirements Regarding Tobacco Company Lobbying

- ***T]he tobacco companies must – upon the request of the state attorney general – disclose all state lobbying expenditures in those states that do not already have any applicable lobbying disclosure requirements.*** [III.(m)]
- ***Nobody can lobby the states on behalf of the tobacco companies on any matter whatsoever without prior express authorization from the tobacco company.*** [III.(m)]

Accordingly, a state attorney general could demand that any tobacco industry lobbyist prove that he or she has obtained express authorization from the tobacco company prior to undertaking any lobbying on any tobacco-related matter. And state tobacco control advocates could raise the question with the attorney general or with the media. Similarly, tobacco control advocates and others should be able to use the periodic reports on tobacco company lobbying expenditures in their state (which the state attorney general can demand, pursuant to the MSA, even if state law does not call for such disclosures) to show how the tobacco industry is overwhelming the public interest in its efforts to influence state government outcomes.

No Material Misrepresentations of Fact relating to Health Effects

No tobacco company that has signed the MSA nor any lobbyist representing any such company “may make any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients.” [III.(r)]

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The full text of the Master Settlement Agreement is available at the website of the National Association of Attorneys General (NAAG): <http://www.naag.org/backpages/naag/tobacco/msa/>.

The MSA for smokeless tobacco, which is also available from the NAAG website, places similar lobbying restrictions on UST: <http://www.naag.org/backpages/naag/tobacco/stmsa/>.