

CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 5485**

56th Legislature  
1999 Regular Session

Passed by the Senate February 24, 1999  
YEAS 40 NAYS 8

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**President of the Senate**

Passed by the House April 25, 1999  
YEAS 77 NAYS 19

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**Speaker of the  
House of Representatives**

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5485** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SENATE BILL 5485**

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Passed Legislature - 1999 Regular Session

**State of Washington                      56th Legislature                      1999 Regular Session**

**By** Senators Thibaudeau, Deccio, McDonald, Snyder, Winsley, Kline, Oke and Costa; by request of Attorney General

Read first time 01/25/1999.      Referred to Committee on Health & Long-Term Care.

1            AN ACT Relating to a reserve account for tobacco product  
2 manufacturers not participating in the master settlement agreement;  
3 adding a new chapter to Title 70 RCW; creating a new section;  
4 prescribing penalties; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** FINDINGS AND PURPOSE. (a) Cigarette smoking  
7 presents serious public health concerns to the State and to the  
8 citizens of the State. The Surgeon General has determined that smoking  
9 causes lung cancer, heart disease and other serious diseases, and that  
10 there are hundreds of thousands of tobacco-related deaths in the United  
11 States each year. These diseases most often do not appear until many  
12 years after the person in question begins smoking.

13            (b) Cigarette smoking also presents serious financial concerns for  
14 the State. Under certain health-care programs, the State may have a  
15 legal obligation to provide medical assistance to eligible persons for  
16 health conditions associated with cigarette smoking, and those persons  
17 may have a legal entitlement to receive such medical assistance.

1 (c) Under these programs, the State pays millions of dollars each  
2 year to provide medical assistance for these persons for health  
3 conditions associated with cigarette smoking.

4 (d) It is the policy of the State that financial burdens imposed on  
5 the State by cigarette smoking be borne by tobacco product  
6 manufacturers rather than by the State to the extent that such  
7 manufacturers either determine to enter into a settlement with the  
8 State or are found culpable by the courts.

9 (e) On November 23, 1998, leading United States tobacco product  
10 manufacturers entered into a settlement agreement, entitled the "Master  
11 Settlement Agreement," with the State. The Master Settlement Agreement  
12 obligates these manufacturers, in return for a release of past, present  
13 and certain future claims against them as described therein, to pay  
14 substantial sums to the State (tied in part to their volume of sales);  
15 to fund a national foundation devoted to the interests of public  
16 health; and to make substantial changes in their advertising and  
17 marketing practices and corporate culture, with the intention of  
18 reducing underage smoking.

19 (f) It would be contrary to the policy of the State if tobacco  
20 product manufacturers who determine not to enter into such a settlement  
21 could use a resulting cost advantage to derive large, short-term  
22 profits in the years before liability may arise without ensuring that  
23 the State will have an eventual source of recovery from them if they  
24 are proven to have acted culpably. It is thus in the interest of the  
25 State to require that such manufacturers establish a reserve fund to  
26 guarantee a source of compensation and to prevent such manufacturers  
27 from deriving large, short-term profits and then becoming judgment-  
28 proof before liability may arise.

29 NEW SECTION. **Sec. 2.** DEFINITIONS. (a) "Adjusted for inflation"  
30 means increased in accordance with the formula for inflation adjustment  
31 set forth in Exhibit C to the Master Settlement Agreement.

32 (b) "Affiliate" means a person who directly or indirectly owns or  
33 controls, is owned or controlled by, or is under common ownership or  
34 control with, another person. Solely for purposes of this definition,  
35 the terms "owns," "is owned" and "ownership" mean ownership of an  
36 equity interest, or the equivalent thereof, of ten percent or more, and  
37 the term "person" means an individual, partnership, committee,  
38 association, corporation or any other organization or group of persons.

1 (c) "Allocable share" means Allocable Share as that term is defined  
2 in the Master Settlement Agreement.

3 (d) "Cigarette" means any product that contains nicotine, is  
4 intended to be burned or heated under ordinary conditions of use, and  
5 consists of or contains (1) any roll of tobacco wrapped in paper or in  
6 any substance not containing tobacco; or (2) tobacco, in any form, that  
7 is functional in the product, which, because of its appearance, the  
8 type of tobacco used in the filler, or its packaging and labeling, is  
9 likely to be offered to, or purchased by, consumers as a cigarette; or  
10 (3) any roll of tobacco wrapped in any substance containing tobacco  
11 which, because of its appearance, the type of tobacco used in the  
12 filler, or its packaging and labeling, is likely to be offered to, or  
13 purchased by, consumers as a cigarette described in clause (1) of this  
14 definition. The term "cigarette" includes "roll-your-own" (i.e., any  
15 tobacco which, because of its appearance, type, packaging, or labeling  
16 is suitable for use and likely to be offered to, or purchased by,  
17 consumers as tobacco for making cigarettes). For purposes of this  
18 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall  
19 constitute one individual "cigarette".

20 (e) "Master Settlement Agreement" means the settlement agreement  
21 (and related documents) entered into on November 23, 1998 by the State  
22 and leading United States tobacco product manufacturers.

23 (f) "Qualified escrow fund" means an escrow arrangement with a  
24 federally or State chartered financial institution having no  
25 affiliation with any tobacco product manufacturer and having assets of  
26 at least \$1,000,000,000 where such arrangement requires that such  
27 financial institution hold the escrowed funds' principal for the  
28 benefit of releasing parties and prohibits the tobacco product  
29 manufacturer placing the funds into escrow from using, accessing or  
30 directing the use of the funds' principal except as consistent with  
31 section 3(b) of this Act.

32 (g) "Released claims" means Released Claims as that term is defined  
33 in the Master Settlement Agreement.

34 (h) "Releasing parties" means Releasing Parties as that term is  
35 defined in the Master Settlement Agreement.

36 (i) "Tobacco Product Manufacturer" means an entity that after the  
37 date of enactment of this Act directly (and not exclusively through any  
38 affiliate):

1 (1) manufactures cigarettes anywhere that such manufacturer intends  
2 to be sold in the United States, including cigarettes intended to be  
3 sold in the United States through an importer (except where such  
4 importer is an original participating manufacturer (as that term is  
5 defined in the Master Settlement Agreement) that will be responsible  
6 for the payments under the Master Settlement Agreement with respect to  
7 such cigarettes as a result of the provisions of subsections II(mm) of  
8 the Master Settlement Agreement and that pays the taxes specified in  
9 subsection II(z) of the Master Settlement Agreement, and provided that  
10 the manufacturer of such cigarettes does not market or advertise such  
11 cigarettes in the United States);

12 (2) is the first purchaser anywhere for resale in the United States  
13 of cigarettes manufactured anywhere that the manufacturer does not  
14 intend to be sold in the United States; or

15 (3) becomes a successor of an entity described in paragraph (1) or  
16 (2).

17 The term "Tobacco Product Manufacturer" shall not include an  
18 affiliate of a tobacco product manufacturer unless such affiliate  
19 itself falls within any of (1)-(3) above.

20 (j) "Units sold" means the number of individual cigarettes sold in  
21 the State by the applicable tobacco product manufacturer (whether  
22 directly or through a distributor, retailer or similar intermediary or  
23 intermediaries) during the year in question, as measured by excise  
24 taxes collected by the State on packs bearing the excise tax stamp of  
25 the State or "roll-your-own" tobacco containers. The department of  
26 revenue shall promulgate such regulations as are necessary to ascertain  
27 the amount of State excise tax paid on the cigarettes of such tobacco  
28 product manufacturer for each year.

29 NEW SECTION. **Sec. 3.** REQUIREMENTS. Any tobacco product  
30 manufacturer selling cigarettes to consumers within the State (whether  
31 directly or through a distributor, retailer or similar intermediary or  
32 intermediaries) after the date of enactment of this Act shall do one of  
33 the following:

34 (a) become a participating manufacturer (as that term is defined in  
35 section II(jj) of the Master Settlement Agreement) and generally  
36 perform its financial obligations under the Master Settlement  
37 Agreement; or

1 (b)(1) place into a qualified escrow fund by April 15 of the year  
2 following the year in question the following amounts (as such amounts  
3 are adjusted for inflation) --

4 1999: \$.0094241 per unit sold after the date of enactment of this  
5 Act;

6 2000: \$.0104712 per unit sold;

7 for each of 2001 and 2002: \$.0136125 per unit sold;

8 for each of 2003 through 2006: \$.0167539 per unit sold;

9 for each of 2007 and each year thereafter: \$.0188482 per unit  
10 sold.

11 (2) A tobacco product manufacturer that places funds into escrow  
12 pursuant to paragraph (1) shall receive the interest or other  
13 appreciation on such funds as earned. Such funds themselves shall be  
14 released from escrow only under the following circumstances --

15 (A) to pay a judgment or settlement on any released claim brought  
16 against such tobacco product manufacturer by the State or any releasing  
17 party located or residing in the State. Funds shall be released from  
18 escrow under this subparagraph (i) in the order in which they were  
19 placed into escrow and (ii) only to the extent and at the time  
20 necessary to make payments required under such judgment or settlement;

21 (B) to the extent that a tobacco product manufacturer establishes  
22 that the amount it was required to place into escrow in a particular  
23 year was greater than the State's allocable share of the total payments  
24 that such manufacturer would have been required to make in that year  
25 under the Master Settlement Agreement (as determined pursuant to  
26 section IX(i)(2) of the Master Settlement Agreement, and before any of  
27 the adjustments or offsets described in section IX(i)(3) of that  
28 Agreement other than the Inflation Adjustment) had it been a  
29 participating manufacturer, the excess shall be released from escrow  
30 and revert back to such tobacco product manufacturer; or

31 (C) to the extent not released from escrow under subparagraphs (A)  
32 or (B), funds shall be released from escrow and revert back to such  
33 tobacco product manufacturer twenty-five years after the date on which  
34 they were placed into escrow.

35 (3) Each tobacco product manufacturer that elects to place funds  
36 into escrow pursuant to this subsection shall annually certify to the  
37 Attorney General that it is in compliance with this subsection. The  
38 Attorney General may bring a civil action on behalf of the State  
39 against any tobacco product manufacturer that fails to place into

1 escrow the funds required under this section. Any tobacco product  
2 manufacturer that fails in any year to place into escrow the funds  
3 required under this section shall --

4 (A) be required within 15 days to place such funds into escrow as  
5 shall bring it into compliance with this section. The court, upon a  
6 finding of a violation of this subsection, may impose a civil penalty  
7 to be paid to the general fund of the state in an amount not to exceed  
8 5 percent of the amount improperly withheld from escrow per day of the  
9 violation and in a total amount not to exceed 100 percent of the  
10 original amount improperly withheld from escrow;

11 (B) in the case of a knowing violation, be required within 15 days  
12 to place such funds into escrow as shall bring it into compliance with  
13 this section. The court, upon a finding of a knowing violation of this  
14 subsection, may impose a civil penalty to be paid to the general fund  
15 of the state in an amount not to exceed 15 percent of the amount  
16 improperly withheld from escrow per day of the violation and in a total  
17 amount not to exceed 300 percent of the original amount improperly  
18 withheld from escrow; and

19 (C) in the case of a second knowing violation, be prohibited from  
20 selling cigarettes to consumers within the State (whether directly or  
21 through a distributor, retailer or similar intermediary) for a period  
22 not to exceed 2 years.

23 Each failure to make an annual deposit required under this section  
24 shall constitute a separate violation. The violator shall also pay the  
25 State's costs and attorney's fees incurred during a successful  
26 prosecution under this paragraph (3).

27 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act constitute  
28 a new chapter in Title 70 RCW.

29 NEW SECTION. **Sec. 5.** Captions used in this act are not part of  
30 the law.

31 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and takes effect  
34 immediately.

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