
ENGROSSED SENATE BILL 5485

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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