
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. (1) 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 (2) 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 (3) 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 (4) 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 (5) 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,
13 present, and certain future claims against them as described therein,
14 to pay substantial sums to the state which is tied in part to their
15 volume of sales; to fund a national foundation devoted to the interests
16 of public health; and to make substantial changes in their advertising
17 and marketing practices and corporate culture, with the intention of
18 reducing underage smoking.

19 (6) 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 therefore in the interest of
25 the state to require that such manufacturers establish a reserve fund
26 to 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 might arise.

29 NEW SECTION. **Sec. 2.** DEFINITIONS. (1) "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 (2) "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 of affiliate, the terms "owns," "is owned," and "ownership" mean
36 ownership of an equity interest, or the equivalent thereof, of ten
37 percent or more, and the term "person" means an individual,

1 partnership, committee, association, corporation, or any other
2 organization or group of persons.

3 (3) "Allocable share" means allocable share as that term is defined
4 in the master settlement agreement.

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

22 (5) "Master settlement agreement" means the settlement agreement,
23 and related documents, entered into on November 23, 1998, by the state
24 and leading United States tobacco product manufacturers.

25 (6) "Qualified escrow fund" means an escrow arrangement with a
26 federally or state-chartered financial institution having no
27 affiliation with any tobacco product manufacturer and having assets of
28 at least one billion dollars, where such arrangement requires that such
29 financial institution hold the escrowed funds' principal for the
30 benefit of releasing parties and prohibits the tobacco product
31 manufacturer placing the funds into escrow from using, accessing, or
32 directing the use of the funds' principal except as consistent with
33 section 3(2) of this act.

34 (7) "Released claims" means released claims as that term is defined
35 in the master settlement agreement.

36 (8) "Releasing parties" means releasing parties as that term is
37 defined in the master settlement agreement.

1 (9) "Tobacco product manufacturer" means an entity that after the
2 effective date of this act directly, and not exclusively through any
3 affiliate:

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

15 (b) Is the first purchaser anywhere for resale in the United States
16 of cigarettes manufactured anywhere that the manufacturer does not
17 intend to be sold in the United States; or

18 (c) Becomes a successor of an entity described in (a) or (b) of
19 this subsection.

20 The term "tobacco product manufacturer" shall not include an
21 affiliate of a tobacco product manufacturer unless such affiliate
22 itself falls within (a), (b), or (c) of this subsection.

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

32 NEW SECTION. **Sec. 3.** REQUIREMENTS. (1) Any tobacco product
33 manufacturer selling cigarettes to consumers within the state, whether
34 directly or through a distributor, retailer, or similar intermediary or
35 intermediaries, after the effective date of this act shall do one of
36 the following:

37 (a) Become a participating manufacturer, as that term is defined in
38 section II(jj) of the master settlement agreement, and generally

1 perform its financial obligations under the master settlement
2 agreement; or

3 (b) Place into a qualified escrow fund by April 15th of the year
4 following the year in question the following amounts, as such amounts
5 are adjusted for inflation:

6 (i) For 1999: \$.0094241 per unit sold after the effective date of
7 this act;

8 (ii) For 2000: \$.0104712 per unit sold after the effective date of
9 this act;

10 (iii) For each of 2001 and 2002: \$.0136125 per unit sold after the
11 effective date of this act;

12 (iv) For each of 2003 through 2006: \$.0167539 per unit sold after
13 the effective date of this act; and

14 (v) For 2007 and each year thereafter: \$.0188482 per unit sold
15 after the effective date of this act.

16 (2) A tobacco product manufacturer that places funds into escrow
17 pursuant to subsection (1)(b) of this section shall receive the
18 interest or other appreciation on such funds as earned. Such funds
19 themselves shall be released from escrow only under the following
20 circumstances:

21 (a) To pay a judgment or settlement on any released claim brought
22 against such tobacco product manufacturer by the state or any releasing
23 party located or residing in the state. Funds shall be released from
24 escrow under this subsection (2)(a): (i) In the order in which they
25 were placed into escrow; and (ii) only to the extent and at the time
26 necessary to make payments required under such judgment or settlement;

27 (b) To the extent that a tobacco product manufacturer establishes
28 that the amount it was required to place into escrow in a particular
29 year was greater than the state's allocable share of the total payments
30 that such manufacturer would have been required to make in that year
31 under the master settlement agreement, as determined pursuant to
32 section IX(i)(2) of the master settlement agreement, and before any of
33 the adjustments or offsets described in section IX(i)(3) of that
34 agreement other than the inflation adjustment, had it been a
35 participating manufacturer, the excess shall be released from escrow
36 and revert back to such tobacco product manufacturer; or

37 (c) To the extent not released from escrow under (a) or (b) of this
38 subsection, funds shall be released from escrow and revert back to such

1 tobacco product manufacturer twenty-five years after the date on which
2 they were placed into escrow.

3 (3) Each tobacco product manufacturer that elects to place funds
4 into escrow pursuant to this section shall annually certify to the
5 attorney general that it is in compliance with this section. The
6 attorney general may bring a civil action on behalf of the state
7 against any tobacco product manufacturer that fails to place into
8 escrow the funds required under this section. Any tobacco product
9 manufacturer that fails in any year to place into escrow the funds
10 required under this section shall:

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

18 (b) In the case of a knowing violation, be required within fifteen
19 days to place such funds into escrow as shall bring it into compliance
20 with this section. The court, upon a finding of a knowing violation of
21 this section, may impose a civil penalty, to be paid to the general
22 fund of the state, in an amount not to exceed fifteen percent of the
23 amount improperly withheld from escrow per day of the violation and in
24 a total amount not to exceed three hundred percent of the original
25 amount improperly withheld from escrow; and

26 (c) In the case of a second knowing violation, be prohibited from
27 selling cigarettes to consumers within the state, whether directly or
28 through a distributor, retailer, or similar intermediary, for a period
29 not to exceed two years.

30 Each failure to make an annual deposit required under this section
31 shall constitute a separate violation.

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

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

1 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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