

HOUSE BILL 671

Unofficial Copy
P5

1999 Regular Session
9lr0926
CF 9lr1869

By: **Delegate Taylor**
Introduced and read first time: February 11, 1999
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 1999

CHAPTER _____

1 AN ACT concerning

2 **Tobacco Product Manufacturers - Settlement of State Claims -**
3 **Nonparticipating Manufacturers - Deposits of Funds in Escrow - Model**
4 **Statute**

5 FOR the purpose of enacting the model statute provided by the Master Settlement
6 Agreement between the State of Maryland and certain tobacco product
7 manufacturers in the United States to create a reserve fund for a certain
8 purpose for those manufacturers who do not enter into the settlement; requiring
9 tobacco product manufacturers that sell cigarettes to consumers in the State to
10 either become a participant in the settlement agreement or to deposit certain
11 amounts of funds, calculated on the basis of certain formulas, into escrow
12 accounts in certain financial institutions for certain years; providing for the
13 circumstances under which the funds in the escrow accounts may be released;
14 requiring tobacco product manufacturers who place funds in escrow accounts to
15 make a certain annual certification to the Attorney General; providing for
16 certain penalties for those manufacturers who fail to comply with the
17 certification requirement; providing that the penalties shall be paid over to the
18 General Fund of the State; and relating generally to tobacco product
19 manufacturers and certain required deposits of funds into escrow accounts.

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 1. Findings and Purpose.

23 (a) Cigarette smoking presents serious public health concerns to the State and
24 to the citizens of the State. The United States Surgeon General has determined that
25 smoking causes lung cancer, heart disease, and other serious diseases, and that there
26 are hundreds of thousands of tobacco-related deaths in the United States each year.

1 These diseases most often do not appear until many years after the person in
2 question begins smoking.

3 (b) Cigarette smoking also presents serious financial concerns for the State.
4 Under certain health care programs, the State may have a legal obligation to provide
5 medical assistance to eligible persons for health conditions associated with cigarette
6 smoking, and those persons may have a legal entitlement to receive the medical
7 assistance.

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

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

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

24 (f) (1) It would be contrary to the policy of the State if tobacco product
25 manufacturers who determine not to enter into such a settlement could use a
26 resulting cost advantage to derive large, short-term profits in the years before
27 liability may arise without ensuring that the State will have an eventual source of
28 recovery from them if they are proven to have acted culpably.

29 (2) It is thus in the interest of the State to require ~~that~~ such tobacco
30 product manufacturers to establish a reserve fund to guarantee a source of
31 compensation in order to prevent them from deriving large, short-term profits and
32 then becoming judgment-proof before liability may arise.

33 2. Definitions.

34 (a) As used in this Act, the following words have the meanings indicated.

35 (b) "Adjusted for inflation" means increased in accordance with the formula
36 for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

37 (c) (1) "Affiliate" means a person who directly or indirectly owns or controls,
38 is owned or controlled by, or is under common ownership or control with, another
39 person.

1 (2) For the purposes of paragraph (1) of this subsection:

2 (i) "owns", "is owned", and "ownership" mean ownership of an
3 equity interest, or the equivalent of an equity ownership thereof, of 10 percent or
4 more; and

5 (ii) "person" means an individual, partnership, committee,
6 association, corporation, or any other organization or group of persons.

7 (d) "Allocable share" has the meaning that is stated in the Master Settlement
8 Agreement.

9 (e) (1) "Cigarette" means any product that contains nicotine, is intended to
10 be burned or heated under ordinary conditions of use, and consists of or contains:

11 (i) any roll of tobacco wrapped in paper or in any substance not
12 containing tobacco;

13 (ii) tobacco, in any form, that is functional in the product, which,
14 because of its appearance, the type of tobacco used in the filler, or its packaging and
15 labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

16 (iii) any roll of tobacco wrapped in any substance containing tobacco
17 which, because of its appearance, the type of tobacco used in the filler, or its
18 packaging and labeling, is likely to be offered to, or purchased by, consumers as a
19 cigarette described in item (i) of this paragraph.

20 ~~(2) (i) "Cigarette" includes tobacco commonly known as a
21 "roll-your-own", 0.09 ounces of which constitute one individual cigarette.~~

22 ~~(ii) "Roll-your-own" means any tobacco which, because of its
23 appearance, type, packaging, or labeling, is suitable for use and likely to be offered to,
24 or purchased by, consumers as tobacco for making cigarettes.~~

25 (2) "Cigarette" includes "roll-your-own" tobacco (i.e., any tobacco which,
26 because of its appearance, type, packaging, or labeling is suitable for use and likely to
27 be offered to or purchased by consumers as tobacco for making cigarettes). For
28 purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall
29 constitute one individual "cigarette".

30 (f) "Master Settlement Agreement" means the settlement agreement and
31 related documents entered into on November 23, 1998, by the State and leading
32 United States tobacco product manufacturers.

33 (g) "Qualified escrow fund" means an escrow arrangement with a federally or
34 State chartered financial institution ~~that~~:

35 ~~(1) has having no affiliation with any tobacco product manufacturer and
36 has having assets of at least \$1,000,000,000; and~~

1 (2) (+) where such arrangement requires ~~the~~ that such financial
2 institution ~~to~~ hold the principal of the escrowed funds for the benefit of releasing
3 parties; and

4 (ii) prohibits the tobacco product manufacturer that places the
5 funds into escrow from using, accessing, or directing the use of the principal of the
6 funds except as ~~otherwise provided by this Act~~ consistent with § 3(b) of this Act.

7 (h) "Released claims" ~~has the meaning stated~~ means released claims as that
8 term is defined in the Master Settlement Agreement.

9 (i) "Releasing parties" ~~has the meaning stated~~ means releasing parties as
10 that term is defined in the Master Settlement Agreement.

11 (j) (1) "Tobacco product manufacturer" means an entity that, after the date
12 of enactment of this Act, directly and not exclusively through any affiliate:

13 (i) ~~1-~~ manufactures cigarettes anywhere that the manufacturer
14 intends them to be sold in the United States, including cigarettes intended to be sold
15 in the United States through an importer, ~~except if the~~ (except where such importer is
16 an original participating manufacturer as that term is defined in the Master
17 Settlement ~~Agreement;~~ Agreement)

18 ~~2-~~ that will be responsible for the payments under the
19 Master Settlement Agreement with respect to ~~the~~ such cigarettes as a result of the
20 provisions of ~~section subsection~~ II(mm) of the Master Settlement Agreement; ~~and~~ and
21 that

22 ~~3-~~ pays the taxes specified in ~~section subsection~~ II(z) of the
23 Master Settlement Agreement, and provided that the manufacturer of the cigarettes
24 does not market or advertise the cigarettes in the United States;

25 (ii) is the first purchaser anywhere for resale in the United States
26 of cigarettes manufactured anywhere that the manufacturer does not intend to be
27 sold in the United States; or

28 (iii) becomes a successor of an entity described in subparagraph (i)
29 or (ii) of this paragraph or paragraph (2) of this subsection.

30 (2) The term "tobacco product manufacturer" ~~does~~ shall not include an
31 affiliate of a tobacco product manufacturer unless ~~the~~ such affiliate itself falls within
32 any provisions of subparagraph (i), (ii), or (iii) of paragraph (1) of this subsection.

33 (k) "~~Unit~~ Units sold" means the number of individual cigarettes:

34 (1) sold in the State by the applicable tobacco product manufacturer,
35 whether directly or through a distributor, retailer, or similar intermediary or
36 intermediaries, ~~during a year listed in § 3(a)(2) of this Act~~ the year in question; and

1 (2) as measured by excise taxes collected by the State on packs or
 2 "roll-your-own" tobacco containers bearing the excise tax stamp of the State. The
 3 State Comptroller shall promulgate regulations necessary to ascertain the amount of
 4 State excise tax paid on the cigarettes of ~~the~~ such tobacco product manufacturer for
 5 each year.

6 3. Requirements.

7 (a) ~~As of the effective date of this Act, a~~ Any tobacco product manufacturer
 8 that sells cigarettes to consumers within the State, whether directly or through a
 9 distributor, retailer, or similar intermediary, ~~shall or intermediaries, after the~~
 10 effective date of this Act, shall either:

11 (1) become a participating manufacturer, as that term is defined in
 12 section II(jj) of the Master Settlement Agreement, and ~~perform the~~ generally perform
 13 its financial obligations for participating manufacturers under the Master Settlement
 14 Agreement; or

15 (2) deposit place into a qualified escrow fund by April 15 of the year ~~after~~
 16 ~~the year specified in each of items (i) through (v) of this paragraph~~ following the year
 17 in question the following amounts, as such amounts are adjusted for inflation:

18 (i) for 1999, \$.0094241 per unit sold after the ~~effective date~~ date of
 19 enactment of this Act;

20 (ii) for 2000, \$.0104712 per unit sold after the ~~effective date~~ date of
 21 enactment of this Act;

22 (iii) for each of 2001 and 2002, \$.0136125 per unit sold after the
 23 ~~effective date~~ date of enactment of this Act;

24 (iv) for each of 2003, 2004, 2005, and 2006, \$.0167539 per unit sold
 25 after the ~~effective date~~ date of enactment of this Act; and

26 (v) for 2007 and each year thereafter, \$.0188482 per unit sold after
 27 the ~~effective date~~ date of enactment of this Act.

28 (b) (1) A tobacco product manufacturer that ~~deposits~~ places funds into escrow
 29 in accordance with subsection (a)(2) of this section shall receive the interest or other
 30 appreciation on the funds as earned.

31 (2) The funds themselves shall be released from escrow only under the
 32 following circumstances:

33 (i) to pay a judgment or settlement on any released claim brought
 34 against such tobacco product manufacturer by the State or any releasing party
 35 located or residing in the State, ~~provided that funds.~~ Funds shall be released from
 36 escrow under this subparagraph:

37 1. in the order in which they were placed into escrow; and

1 (4) (i) If a tobacco product manufacturer has knowingly violated ~~this~~
2 ~~section § 3(a)(2) or (b)~~, the manufacturer shall be required within 15 days to place ~~the~~
3 such funds into escrow ~~to~~ as will bring it into compliance with this section.

4 (ii) Upon a finding of a knowing violation of ~~this section § 3(a)(2) or~~
5 (b), the court may impose a civil penalty, to be paid to the General Fund of the State:

6 1. in an amount not to exceed 15 percent of the amount
7 improperly withheld from escrow per day of the violation; and

8 2. in a total amount not to exceed 300 percent of the original
9 amount improperly withheld from escrow.

10 (5) In the case of a second knowing violation of ~~this section § 3(a)(2) or~~
11 (b), the tobacco product manufacturer shall be prohibited from selling cigarettes to
12 consumers within the State, whether directly or through a distributor, retailer, or
13 similar intermediary or intermediaries, for a period not to exceed 2 years.

14 (6) Each failure to make the annual deposit required under this section
15 shall constitute a separate violation.

16 (7) ~~Any penalty imposed and collected under this subsection shall be~~
17 ~~deposited to the credit of the State and paid over to the General Fund of the State.~~

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect June 1, 1999.