

ASSEMBLY BILL NO. 667—COMMITTEE ON TAXATION

(ON BEHALF OF ATTORNEY GENERAL)

MARCH 22, 1999

Referred to Committee on Taxation

SUMMARY—Requires all manufacturers of tobacco products to participate in settlement with this state of certain liabilities. (BDR 32-1371)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to tobacco; requiring all manufacturers of tobacco products sold in this state to participate, directly or through escrow, in the settlement of certain liabilities made between certain manufacturers and this and other states; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 370 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 17, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 17, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *13, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
- 7 **Sec. 3.** *“Adjusted for inflation” means increased in accordance with*
8 *the formula for adjustment for inflation set forth in Exhibit C to the*
9 *master settlement agreement.*
- 10 **Sec. 4.** *“Affiliate” means a person who directly or indirectly owns or*
11 *controls, is owned or controlled by, or is under common ownership or*
12 *control with, another person. For the purposes of this section, “own”*
13 *means to have an equity interest, or the equivalent thereof, of 10 percent*
14 *or more.*
- 15 **Sec. 5.** *“Allocable share” has the meaning ascribed to it in section*
16 *II(f) of the master settlement agreement.*

1 **Sec. 6. “Cigarette” means any product that contains nicotine, is**
2 **intended to be burned or heated under ordinary conditions of use, and**
3 **consists of or contains:**

4 1. Any roll of tobacco wrapped in paper or in any other substance
5 not containing tobacco;

6 2. Tobacco, in any form, that is functional in the product, which
7 because of its appearance, the type of tobacco used in the filler or its
8 packaging and labeling is likely to be offered to or purchased by
9 consumers as a cigarette described in subsection 1; 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 filler or
12 its packaging and labeling is likely to be offered to or purchased by
13 consumers as a cigarette described in subsection 1.

14 The term includes “roll-your-own” tobacco, that is, any tobacco which
15 because of its appearance, type, packaging or labeling is suitable for use
16 and likely to be offered to or purchased by consumers as tobacco for
17 making cigarettes. For the purposes of this section, 0.09 ounces of “roll-
18 your-own” tobacco constitutes one individual cigarette.

19 **Sec. 7. “Manufacturer of tobacco products” means a person that,**
20 **after the effective date of this act, directly, and not exclusively through an**
21 **affiliate:**

22 1. Manufactures cigarettes anywhere that the manufacturer intends
23 to be sold in the United States, including cigarettes intended to be sold in
24 the United States through an importer:

25 (a) Unless the importer is an original participating manufacturer that:

26 (1) Will be responsible for the payments under the master
27 settlement agreement with respect to the cigarettes as a result of the
28 provisions of section II(mm) of the master settlement agreement; and

29 (2) Pays the taxes specified in section II(z) of the master settlement
30 agreement; and

31 (b) If the manufacturer of the cigarettes does not market or advertise
32 the cigarettes in the United States;

33 2. Is the first purchaser anywhere for resale in the United States of
34 cigarettes manufactured anywhere which the manufacturer does not
35 intend to be sold in the United States; or

36 3. Becomes a successor of a person described in subsection 1
37 or 2.

38 The term does not include an affiliate of a manufacturer of tobacco
39 products unless the affiliate itself is a person described in subsection 1, 2
40 or 3.

1 **Sec. 8.** *“Master settlement agreement” means the settlement*
2 *agreement, and related documents, entered into on November 23, 1998,*
3 *by this state and leading United States manufacturers of tobacco*
4 *products.*

5 **Sec. 9.** *“Participating manufacturer” has the meaning ascribed to it*
6 *in section II(jj) of the master settlement agreement.*

7 **Sec. 10.** *“Qualified escrow” means an agreement with a financial*
8 *institution, chartered by this state or the United States, that has no*
9 *affiliation with any manufacturer of tobacco products and has assets of*
10 *at least \$1 billion if the agreement requires the financial institution to*
11 *hold the principal of the amount deposited in escrow for the benefit of*
12 *releasing parties and prohibits the manufacturer of tobacco products*
13 *which deposits the money from using, having access to or directing the*
14 *use of the principal of the amount deposited except as permitted under*
15 *subsections 2 and 3 of section 16 of this act.*

16 **Sec. 11.** *“Released claims” has the meaning ascribed to it in section*
17 *II(nn) of the master settlement agreement.*

18 **Sec. 12.** *“Releasing parties” has the meaning ascribed to it in*
19 *section II(pp) of the master settlement agreement.*

20 **Sec. 13.** *“Units sold” means, with respect to a particular*
21 *manufacturer of tobacco products for a particular year, the number of*
22 *individual cigarettes sold in this state by the manufacturer directly or*
23 *through a distributor, retailer or similar intermediary during that year, as*
24 *measured by excise taxes collected by the state on packs, or containers of*
25 *“roll-your-own” tobacco, bearing the excise stamp of this state.*

26 **Sec. 14.** *The department of taxation shall adopt such regulations as*
27 *are necessary to ascertain the amount of excise tax collected by the state*
28 *on the cigarettes of each manufacturer of tobacco products in each year.*

29 **Sec. 15.** *A manufacturer of tobacco products that sells cigarettes to*
30 *consumers in this state, directly or through a distributor, retailer or*
31 *similar intermediary, after the effective date of this act shall:*

32 1. *Become a participating manufacturer and perform its financial*
33 *obligations as such under the master settlement agreement; or*

34 2. *Deposit into a qualified escrow, on or before April 15 of the year*
35 *following the year in which the cigarettes were sold, the following*
36 *amounts adjusted for inflation:*

37 (a) *For the year 1999, \$0.0094241 for each unit sold after the effective*
38 *date of this act;*

39 (b) *For the year 2000, \$0.0104712 for each unit sold;*

40 (c) *For the years 2001 and 2002, \$0.0136125 for each unit sold;*

41 (d) *For the years 2003 to 2006, inclusive, \$0.0167539 for each unit*
42 *sold; and*

1 (e) For the year 2007 and each year thereafter, \$0.0188482 for each
2 unit sold.

3 **Sec. 16.** A manufacturer of tobacco products that deposits money
4 into escrow pursuant to section 15 of this act is entitled to receive the
5 interest or other appreciation on the deposit as earned. The principal of
6 the deposit may be released from escrow only in one of the following
7 circumstances:

8 1. To pay a judgment or settlement on a released claim brought
9 against the manufacturer by this state or by a releasing party located or
10 residing in this state. Money must be released from escrow under this
11 subsection in the order in which it was deposited into escrow only to the
12 extent and at the time necessary to make payments required under the
13 judgment or settlement.

14 2. To the extent that the manufacturer establishes that the amount it
15 was required to deposit into escrow in a particular year was greater than
16 this state's allocable share of the total payments that the manufacturer
17 would have been required to make in that year under the master
18 settlement agreement, determined pursuant to section IX(i)(2) of that
19 agreement and before any of the adjustments or offsets described in
20 section IX(i)(3) of that agreement other than the adjustment for inflation
21 if the manufacturer had been a participating manufacturer, the excess
22 must be released from escrow and reverts to the manufacturer.

23 3. To the extent not released from escrow under subsection 1 or 2,
24 deposits must be released from escrow and revert to the manufacturer 25
25 years after the date on which they were deposited.

26 **Sec. 17.** 1. A manufacturer of tobacco products which elects to
27 deposit money into escrow pursuant to section 15 of this act shall
28 annually certify to the attorney general that it is in compliance with that
29 section. If the attorney general does not receive the annual certification,
30 he shall mail a notice to the manufacturer. The attorney general may
31 maintain a civil action of behalf of this state against any manufacturer of
32 tobacco products which fails to deposit into escrow the amount required
33 by that section.

34 2. A manufacturer of tobacco products that so fails in any year:

35 (a) Shall deposit into escrow within 15 days after the date on which
36 the notice required by subsection 1 was mailed the amount required to
37 bring the manufacturer into compliance with section 15 of this act. The
38 court, upon finding a violation of this subsection, may impose a civil
39 penalty of not more than 5 percent of the amount improperly withheld
40 from escrow for each day of the violation, but not more in total amount
41 than three times the original amount improperly withheld from escrow.

1 ***(b) In the case of a knowing violation, shall deposit into escrow within***
2 ***15 days after the date on which the notice required by subsection 1 was***
3 ***mailed the amount required to bring the manufacturer into compliance***
4 ***with section 15 of this act. The court, upon finding a knowing violation***
5 ***of this subsection, may impose a civil penalty of not more than 15 percent***
6 ***of the amount improperly withheld from escrow for each day of the***
7 ***violation, but not more in total amount than three times the original***
8 ***amount improperly withheld from escrow.***

9 ***(c) In the case of a second knowing violation, shall not sell cigarettes***
10 ***to consumers in this state, directly or through a distributor, retailer or***
11 ***similar intermediary, for a period to be fixed by the court not to exceed 2***
12 ***years.***

13 ***3. Each failure to make an annual deposit required by section 15 of***
14 ***this act constitutes a separate violation of this section.***

15 **Sec. 18.** This act becomes effective upon passage and approval.