

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 or to place money in escrow. (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 in the settlement made between certain manufacturers and this and other states or to place money in escrow; 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.** 1. Cigarette smoking presents serious public health
2 concerns to the state and to the citizens of the state. The Surgeon General
3 has determined that smoking causes lung cancer, heart disease and other
4 serious diseases, and that there are hundreds of thousands of tobacco-
5 related deaths in the United States each year. These diseases most often do
6 not appear until many years after the person in question begins smoking.
7 2. Cigarette smoking also presents serious financial concerns for the
8 state. Under certain health-care programs, the state may have a legal
9 obligation to provide medical assistance to eligible persons for health
10 conditions associated with cigarette smoking, and those persons may have a
11 legal entitlement to receive such medical assistance.
12 3. Under these programs, the state pays millions of dollars each year to
13 provide medical assistance for these persons for health conditions
14 associated with cigarette smoking.
15 4. It is the policy of the state that financial burdens imposed on the
16 state by cigarette smoking be borne by tobacco product manufacturers

1 rather than by the state to the extent that such manufacturers either
2 determine to enter into a settlement with the state or are found culpable by
3 the courts.

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

13 6. It would be contrary to the policy of the state if tobacco product
14 manufacturers who determine not to enter into such a settlement could use a
15 resulting cost advantage to derive large, short-term profits in the years
16 before liability may arise without ensuring that the state will have an
17 eventual source of recovery from them if they are proven to have acted
18 culpably. It is thus in the interest of the state to require that such
19 manufacturers establish a reserve fund to guarantee a source of
20 compensation and to prevent such manufacturers from deriving large, short-
21 term profits and then becoming judgment-proof before liability may arise.

22 **Sec. 2.** Title 32 of NRS is hereby amended by adding thereto a new
23 chapter to consist of the provisions set forth as sections 3 to 18, inclusive,
24 of this act.

25 **Sec. 3.** *As used in sections 3 to 18, inclusive, of this act, the words*
26 *and terms defined in sections 4 to 14, inclusive, of this act have the*
27 *meanings ascribed to them in those sections.*

28 **Sec. 4.** *"Adjusted for inflation" means increased in accordance with*
29 *the formula for inflation adjustment set forth in Exhibit C to the Master*
30 *Settlement Agreement.*

31 **Sec. 5.** *"Affiliate" means a person who directly or indirectly owns or*
32 *controls, is owned or controlled by, or is under common ownership or*
33 *control with, another person. Solely for the purposes of this definition,*
34 *the terms "owns," "is owned" and "ownership" mean ownership of an*
35 *equity interest, or the equivalent thereof, of ten percent or more, and the*
36 *term "person" means an individual, partnership, committee, association,*
37 *corporation or any other organization or group of persons.*

38 **Sec. 6.** *"Allocable share" has the meaning ascribed to it in section*
39 *II(f) of the Master Settlement Agreement.*

40 **Sec. 7.** *"Cigarette" means any product that contains nicotine, is*
41 *intended to be burned or heated under ordinary conditions of use, and*
42 *consists of or contains:*

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

3 2. Tobacco, in any form, that is functional in the product, which
4 because of its appearance, the type of tobacco used in the filler, or its
5 packaging and labeling, is likely to be offered to or purchased by
6 consumers as a cigarette; or

7 3. Any roll of tobacco wrapped in any substance containing tobacco
8 which, because of its appearance, the type of tobacco used in the filler, or
9 its packaging and labeling, is likely to be offered to or purchased by
10 consumers as a cigarette described in subsection 1.

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

16 **Sec. 8.** "Manufacturer of tobacco products" means an entity that,
17 after the effective date of this act, directly, and not exclusively through an
18 affiliate:

19 1. Manufactures cigarettes anywhere that such manufacturer intends
20 to be sold in the United States, including cigarettes intended to be sold in
21 the United States through an importer (except where such importer is an
22 original participating manufacturer, as that term is defined in the Master
23 Settlement Agreement, that will be responsible for the payments under
24 the Master Settlement Agreement with respect to such cigarettes as a
25 result of the provisions of subsection II(mm) of the Master Settlement
26 Agreement and that pays the taxes specified in subsection II(z) of the
27 Master Settlement Agreement, and provided that the manufacturer of
28 such cigarettes does not market or advertise such cigarettes in the United
29 States);

30 2. Is the first purchaser anywhere for resale in the United States of
31 cigarettes manufactured anywhere that the manufacturer does not intend
32 to be sold in the United States; or

33 3. Becomes a successor of an entity described in subsection 1 or 2.
34 The term does not include an affiliate of a manufacturer of tobacco
35 products unless the affiliate itself is an entity described in subsection 1, 2
36 or 3.

37 **Sec. 9.** "Master Settlement Agreement" means the settlement
38 agreement, and related documents, entered into on November 23, 1998,
39 by this state and leading United States manufacturers of tobacco
40 products.

41 **Sec. 10.** "Participating manufacturer" has the meaning ascribed to
42 it in section II(jj) of the Master Settlement Agreement.

1 **Sec. 11.** *“Qualified escrow fund” means an escrow arrangement*
2 *with a federally or state-chartered financial institution, that has no*
3 *affiliation with any manufacturer of tobacco products and has assets of*
4 *at least \$1 billion where the arrangement requires the financial*
5 *institution to hold the principal of the amount deposited in escrow for the*
6 *benefit of releasing parties and prohibits the manufacturer of tobacco*
7 *products which deposits the money from using, having access to or*
8 *directing the use of the principal of the amount deposited except as*
9 *permitted under section 17 of this act.*

10 **Sec. 12.** *“Released claims” has the meaning ascribed to it in section*
11 *II(nn) of the Master Settlement Agreement.*

12 **Sec. 13.** *“Releasing parties” has the meaning ascribed to it in*
13 *section II(pp) of the Master Settlement Agreement.*

14 **Sec. 14.** *“Units sold” means, with respect to a particular*
15 *manufacturer of tobacco products for a particular year, the number of*
16 *individual cigarettes sold in this state by the manufacturer directly or*
17 *through a distributor, retailer or similar intermediary or intermediaries*
18 *during that year, as measured by excise taxes collected by the state on*
19 *packs, or containers of “roll-your-own” tobacco, bearing the excise*
20 *stamp of this state.*

21 **Sec. 15.** *The department of taxation shall adopt such regulations as*
22 *are necessary to ascertain the amount of excise tax collected by the state*
23 *on the cigarettes of each manufacturer of tobacco products for each*
24 *year.*

25 **Sec. 16.** *A manufacturer of tobacco products that sells cigarettes to*
26 *consumers in this state, directly or through a distributor, retailer or*
27 *similar intermediary or intermediaries, after the effective date of this act*
28 *shall do one of the following:*

29 1. *Become a participating manufacturer and generally perform its*
30 *financial obligations under the Master Settlement Agreement; or*

31 2. *Deposit into a qualified escrow fund, on or before April 15 of the*
32 *year following the year in question, the following amounts as such*
33 *amounts are adjusted for inflation:*

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

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

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

39 (d) *For each of the years 2003 through 2006, \$0.0167539 for each*
40 *unit sold; and*

41 (e) *For each of the year 2007 and each year thereafter, \$0.0188482*
42 *for each unit sold.*

1 **Sec. 17.** *A manufacturer of tobacco products that deposits money*
2 *into escrow pursuant to subsection 2 of section 16 of this act shall receive*
3 *the interest or other appreciation on the deposit as earned. The principal*
4 *of the deposit may be released from escrow only under the following*
5 *circumstances:*

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

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

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

25 **Sec. 18.** 1. *A manufacturer of tobacco products that elects to*
26 *deposit money into escrow pursuant to subsection 2 of section 16 of this*
27 *act shall annually certify to the attorney general that it is in compliance*
28 *with that subsection and with section 17 of this act. If the attorney*
29 *general does not receive the annual certification, he shall mail a notice to*
30 *the manufacturer. The attorney general may maintain a civil action on*
31 *behalf of this state against any manufacturer of tobacco products which*
32 *fails to deposit into escrow the amount required by section 16 of this act.*

33 2. *A manufacturer of tobacco products that fails in any year to place*
34 *into escrow the money required under section 16 of this act shall:*

35 (a) *Be required within 15 days to place such money into escrow as*
36 *shall bring it into compliance with section 16 of this act. The court, upon*
37 *a finding of a violation of subsection 2 of section 16 or section 17 of this*
38 *act, may impose a civil penalty to be paid to the state general fund in an*
39 *amount not to exceed 5 percent of the amount improperly withheld from*
40 *escrow per day of the violation and in a total amount not to exceed 100*
41 *percent of the original amount improperly withheld from escrow.*

42 (b) *In the case of a knowing violation, be required within 15 days to*
43 *place such money into escrow as shall bring it into compliance with this*

1 *section. The court, upon a finding of a knowing violation of subsection 2*
2 *of section 16 or section 17 of this act, may impose a civil penalty to be*
3 *paid to the state general fund in an amount not to exceed 15 percent of*
4 *the amount improperly withheld from escrow per day of the violation and*
5 *in a total amount not to exceed 300 percent of the original amount*
6 *improperly withheld from escrow.*

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

11 *3. Each failure to make an annual deposit required by section 16 of*
12 *this act constitutes a separate violation.*

13 **Sec. 19.** This act becomes effective upon passage and approval.

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