

2 **SB 5485** - S AMD - 012
3 By Senator Thibaudeau

4 ADOPTED 2/24/99

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** FINDINGS AND PURPOSE. (a) Cigarette
8 smoking presents serious public health concerns to the State and to the
9 citizens of the State. The Surgeon General has determined that smoking
10 causes lung cancer, heart disease and other serious diseases, and that
11 there are hundreds of thousands of tobacco-related deaths in the United
12 States each year. These diseases most often do not appear until many
13 years after the person in question begins smoking.

14 (b) Cigarette smoking also presents serious financial concerns for
15 the State. Under certain health-care programs, the State may have a
16 legal obligation to provide medical assistance to eligible persons for
17 health conditions associated with cigarette smoking, and those persons
18 may have a legal entitlement to receive such medical assistance.

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

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

27 (e) On November 23, 1998, leading United States tobacco product
28 manufacturers entered into a settlement agreement, entitled the "Master
29 Settlement Agreement," with the State. The Master Settlement Agreement
30 obligates these manufacturers, in return for a release of past, present
31 and certain future claims against them as described therein, to pay
32 substantial sums to the State (tied in part to their volume of sales);
33 to fund a national foundation devoted to the interests of public
34 health; and to make substantial changes in their advertising and
35 marketing practices and corporate culture, with the intention of
36 reducing underage smoking.

1 (f) It would be contrary to the policy of the State if tobacco
2 product manufacturers who determine not to enter into such a settlement
3 could use a resulting cost advantage to derive large, short-term
4 profits in the years before liability may arise without ensuring that
5 the State will have an eventual source of recovery from them if they
6 are proven to have acted culpably. It is thus in the interest of the
7 State to require that such manufacturers establish a reserve fund to
8 guarantee a source of compensation and to prevent such manufacturers
9 from deriving large, short-term profits and then becoming judgment-
10 proof before liability may arise.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. (a) "Adjusted for inflation"
12 means increased in accordance with the formula for inflation adjustment
13 set forth in Exhibit C to the Master Settlement Agreement.

14 (b) "Affiliate" means a person who directly or indirectly owns or
15 controls, is owned or controlled by, or is under common ownership or
16 control with, another person. Solely for purposes of this definition,
17 the terms "owns," "is owned" and "ownership" mean ownership of an
18 equity interest, or the equivalent thereof, of ten percent or more, and
19 the term "person" means an individual, partnership, committee,
20 association, corporation or any other organization or group of persons.

21 (c) "Allocable share" means Allocable Share as that term is defined
22 in the Master Settlement Agreement.

23 (d) "Cigarette" means any product that contains nicotine, is
24 intended to be burned or heated under ordinary conditions of use, and
25 consists of or contains (1) any roll of tobacco wrapped in paper or in
26 any substance not containing tobacco; or (2) tobacco, in any form, that
27 is functional in the product, which, because of its appearance, the
28 type of tobacco used in the filler, or its packaging and labeling, is
29 likely to be offered to, or purchased by, consumers as a cigarette; or
30 (3) any roll of tobacco wrapped in any substance containing tobacco
31 which, because of its appearance, the type of tobacco used in the
32 filler, or its packaging and labeling, is likely to be offered to, or
33 purchased by, consumers as a cigarette described in clause (1) of this
34 definition. The term "cigarette" includes "roll-your-own" (i.e., any
35 tobacco which, because of its appearance, type, packaging, or labeling
36 is suitable for use and likely to be offered to, or purchased by,
37 consumers as tobacco for making cigarettes). For purposes of this

1 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall
2 constitute one individual "cigarette".

3 (e) "Master Settlement Agreement" means the settlement agreement
4 (and related documents) entered into on November 23, 1998 by the State
5 and leading United States tobacco product manufacturers.

6 (f) "Qualified escrow fund" means an escrow arrangement with a
7 federally or State chartered financial institution having no
8 affiliation with any tobacco product manufacturer and having assets of
9 at least \$1,000,000,000 where such arrangement requires that such
10 financial institution hold the escrowed funds' principal for the
11 benefit of releasing parties and prohibits the tobacco product
12 manufacturer placing the funds into escrow from using, accessing or
13 directing the use of the funds' principal except as consistent with
14 section 3(b) of this Act.

15 (g) "Released claims" means Released Claims as that term is defined
16 in the Master Settlement Agreement.

17 (h) "Releasing parties" means Releasing Parties as that term is
18 defined in the Master Settlement Agreement.

19 (i) "Tobacco Product Manufacturer" means an entity that after the
20 date of enactment of this Act directly (and not exclusively through any
21 affiliate):

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

33 (2) is the first purchaser anywhere for resale in the United States
34 of cigarettes manufactured anywhere that the manufacturer does not
35 intend to be sold in the United States; or

36 (3) becomes a successor of an entity described in paragraph (1) or
37 (2).

1 The term "Tobacco Product Manufacturer" shall not include an
2 affiliate of a tobacco product manufacturer unless such affiliate
3 itself falls within any of (1)-(3) above.

4 (j) "Units sold" means the number of individual cigarettes sold in
5 the State by the applicable tobacco product manufacturer (whether
6 directly or through a distributor, retailer or similar intermediary or
7 intermediaries) during the year in question, as measured by excise
8 taxes collected by the State on packs bearing the excise tax stamp of
9 the State or "roll-your-own" tobacco containers. The department of
10 revenue shall promulgate such regulations as are necessary to ascertain
11 the amount of State excise tax paid on the cigarettes of such tobacco
12 product manufacturer for each year.

13 NEW SECTION. **Sec. 3.** REQUIREMENTS. Any tobacco product
14 manufacturer selling cigarettes to consumers within the State (whether
15 directly or through a distributor, retailer or similar intermediary or
16 intermediaries) after the date of enactment of this Act shall do one of
17 the following:

18 (a) become a participating manufacturer (as that term is defined in
19 section II(jj) of the Master Settlement Agreement) and generally
20 perform its financial obligations under the Master Settlement
21 Agreement; or

22 (b)(1) place into a qualified escrow fund by April 15 of the year
23 following the year in question the following amounts (as such amounts
24 are adjusted for inflation) --

25 1999: \$.0094241 per unit sold after the date of enactment of this
26 Act;

27 2000: \$.0104712 per unit sold;

28 for each of 2001 and 2002: \$.0136125 per unit sold;

29 for each of 2003 through 2006: \$.0167539 per unit sold;

30 for each of 2007 and each year thereafter: \$.0188482 per unit
31 sold.

32 (2) A tobacco product manufacturer that places funds into escrow
33 pursuant to paragraph (1) shall receive the interest or other
34 appreciation on such funds as earned. Such funds themselves shall be
35 released from escrow only under the following circumstances --

36 (A) to pay a judgment or settlement on any released claim brought
37 against such tobacco product manufacturer by the State or any releasing
38 party located or residing in the State. Funds shall be released from

1 escrow under this subparagraph (i) in the order in which they were
2 placed into escrow and (ii) only to the extent and at the time
3 necessary to make payments required under such judgment or settlement;

4 (B) to the extent that a tobacco product manufacturer establishes
5 that the amount it was required to place into escrow in a particular
6 year was greater than the State's allocable share of the total payments
7 that such manufacturer would have been required to make in that year
8 under the Master Settlement Agreement (as determined pursuant to
9 section IX(i)(2) of the Master Settlement Agreement, and before any of
10 the adjustments or offsets described in section IX(i)(3) of that
11 Agreement other than the Inflation Adjustment) had it been a
12 participating manufacturer, the excess shall be released from escrow
13 and revert back to such tobacco product manufacturer; or

14 (C) to the extent not released from escrow under subparagraphs (A)
15 or (B), funds shall be released from escrow and revert back to such
16 tobacco product manufacturer twenty-five years after the date on which
17 they were placed into escrow.

18 (3) Each tobacco product manufacturer that elects to place funds
19 into escrow pursuant to this subsection shall annually certify to the
20 Attorney General that it is in compliance with this subsection. The
21 Attorney General may bring a civil action on behalf of the State
22 against any tobacco product manufacturer that fails to place into
23 escrow the funds required under this section. Any tobacco product
24 manufacturer that fails in any year to place into escrow the funds
25 required under this section shall --

26 (A) be required within 15 days to place such funds into escrow as
27 shall bring it into compliance with this section. The court, upon a
28 finding of a violation of this subsection, may impose a civil penalty
29 to be paid to the general fund of the state in an amount not to exceed
30 5 percent of the amount improperly withheld from escrow per day of the
31 violation and in a total amount not to exceed 100 percent of the
32 original amount improperly withheld from escrow;

33 (B) in the case of a knowing violation, be required within 15 days
34 to place such funds into escrow as shall bring it into compliance with
35 this section. The court, upon a finding of a knowing violation of this
36 subsection, may impose a civil penalty to be paid to the general fund
37 of the state in an amount not to exceed 15 percent of the amount
38 improperly withheld from escrow per day of the violation and in a total

1 amount not to exceed 300 percent of the original amount improperly
2 withheld from escrow; and

3 (C) in the case of a second knowing violation, be prohibited from
4 selling cigarettes to consumers within the State (whether directly or
5 through a distributor, retailer or similar intermediary) for a period
6 not to exceed 2 years.

7 Each failure to make an annual deposit required under this section
8 shall constitute a separate violation. The violator shall also pay the
9 State's costs and attorney's fees incurred during a successful
10 prosecution under this paragraph (3).

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

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

15 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately."

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21 ADOPTED 2/24/99

22 On page 1, line 2 of the title, after "agreement;" strike the
23 remainder of the title and insert "adding a new chapter to Title 70
24 RCW; creating a new section; prescribing penalties; and declaring an
25 emergency."

--- END ---