

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 1601

By: Vaughn, Collins, Fields,
Askins, Phillips, Sullivan
(Leonard) and Staggs of the
House

6 and

7 Robinson of the Senate
8

9
10
11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to tobacco; stating legislative
13 findings; defining terms; requiring tobacco product
14 manufacturers to meet certain financial obligations
15 pursuant to certain agreement or make certain
16 payments into escrow fund; providing for interest and
17 other appreciation on such funds; specifying and
18 providing for the release of such funds; providing
19 for certain reversion of such funds; providing for
20 compliance certification; stating consequences for
21 noncompliance; providing for codification; providing
22 an effective date; and declaring an emergency.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified
25 in the Oklahoma Statutes as Section 600.21 of Title 37, unless there
26 is created a duplication in numbering, reads as follows:

27 A. The Oklahoma Legislature finds that cigarette smoking
28 presents serious public health concerns to the State of Oklahoma and
29 its citizens. The Oklahoma Legislature also finds that:

30 1. The Surgeon General has determined that smoking causes lung
31 cancer, heart disease and other serious diseases;

32 2. There are hundreds of thousands of tobacco-related deaths in
the United States each year; and

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

3 B. The Oklahoma Legislature further finds that cigarette
4 smoking also presents serious financial concerns for the State of
5 Oklahoma; that, under certain health-care programs, the state may
6 have a legal obligation to provide medical assistance to eligible
7 persons for health conditions associated with cigarette smoking;
8 that those persons may have a legal entitlement to receive such
9 medical assistance; and that, under these programs, the State of
10 Oklahoma pays millions of dollars each year to provide medical
11 assistance for those persons for health conditions associated with
12 cigarette smoking.

13 C. The Oklahoma Legislature additionally finds that it is the
14 policy of the State of Oklahoma that financial burdens imposed on
15 the state by cigarette smoking should be borne by tobacco product
16 manufacturers rather than by the State of Oklahoma to the extent
17 that such manufacturers either determine to enter into a settlement
18 with the state, or are found culpable by the courts; and that on
19 November 23, 1998, leading United States tobacco product
20 manufacturers entered into a settlement agreement, entitled the
21 "Master Settlement Agreement", with the state, which obligates these
22 manufacturers, in return for a release of past, present and certain
23 future claims against them as described therein, to pay substantial
24 sums to the state (tied in part to their volume of sales); to fund a
25 national foundation devoted to the interests of public health; and
26 to make substantial changes in their advertising and marketing
27 practices and corporate culture, with the intention of reducing
28 underage smoking.

29 D. The Oklahoma Legislature therefore finally finds that it
30 would be contrary to the policy of the State of Oklahoma if tobacco
31 product manufacturers who determine not to enter into such a
32 settlement could use a resulting cost advantage to derive large,

1 short-term profits in the years before liability may arise without
2 ensuring that the state will have an eventual source of recovery
3 from them if they are proven to have acted culpably; and that it is
4 thus in the interest of the State of Oklahoma to require that such
5 manufacturers establish a reserve fund to guarantee a source of
6 compensation and to prevent such manufacturers from deriving large,
7 short-term profits and then becoming judgment-proof before liability
8 may arise.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 600.22 of Title 37, unless there
11 is created a duplication in numbering, reads as follows:

12 When used in this act:

13 1. "Adjusted for inflation" means increased in accordance with
14 the formula for inflation adjustment set forth in Exhibit C to the
15 Master Settlement Agreement;

16 2. "Affiliate" means a person who directly or indirectly owns
17 or controls, is owned or controlled by, or is under common ownership
18 or control with, another person. Solely for purposes of this
19 definition, the terms "owns", "is owned" and "ownership" mean
20 ownership of an equity interest, or the equivalent thereof, of ten
21 percent (10%) or more, and the term "person" means an individual,
22 partnership, committee, association, corporation or any other
23 organization or group of persons;

24 3. "Allocable share" means allocable share as that term is
25 defined in the Master Settlement Agreement;

26 4. "Cigarette" means any product that contains nicotine, is
27 intended to be burned or heated under ordinary conditions of use,
28 and consists of or contains:

29 a. any roll of tobacco wrapped in paper or in any
30 substance not containing tobacco,

31 b. tobacco, in any form, that is functional in the
32 product, which, because of its appearance, the type of

1 tobacco used in the filler, or its packaging and
2 labeling, is likely to be offered to, or purchased by,
3 consumers as a cigarette, or

4 c. any roll of tobacco wrapped in any substance
5 containing tobacco which, because of its appearance,
6 the type of tobacco used in the filler, or its
7 packaging and labeling, is likely to be offered to, or
8 purchased by, consumers as a cigarette described in
9 subparagraph a of this paragraph.

10 The term "cigarette" includes "roll-your-own" (i.e., any tobacco
11 which, because of its appearance, type, packaging, or labeling is
12 suitable for use and likely to be offered to, or purchased by,
13 consumers as tobacco for making cigarettes). For purposes of this
14 definition of "cigarette", nine one-hundredths (0.09) of an ounce of
15 "roll-your-own" tobacco shall constitute one individual "cigarette";

16 5. "Master Settlement Agreement" means the settlement agreement
17 and related documents entered into on November 23, 1998, by the
18 State of Oklahoma and leading United States tobacco product
19 manufacturers;

20 6. "Qualified escrow fund" means an escrow arrangement with a
21 federally or state-chartered financial institution having no
22 affiliation with any tobacco product manufacturer and having assets
23 of at least One Billion Dollars (\$1,000,000,000.00) where such
24 arrangement requires that such financial institution hold the
25 escrowed funds' principal for the benefit of releasing parties and
26 prohibits the tobacco product manufacturer placing funds into escrow
27 from using, accessing or directing the use of the funds' principal
28 except as consistent with Section 3 of this act;

29 7. "Released claims" means released claims as that term is
30 defined in the Master Settlement Agreement;

31 8. "Releasing parties" means releasing parties as that term is
32 defined in the Master Settlement Agreement;

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

- 4 a. manufactures cigarettes anywhere that such
5 manufacturer intends to be sold in the United States,
6 including cigarettes intended to be sold in the United
7 States through an importer (except where such importer
8 is an original participating manufacturer, as that
9 term is defined in the Master Settlement Agreement,
10 that will be responsible for the payments under the
11 Master Settlement Agreement with respect to such
12 cigarettes as a result of the provisions of subsection
13 II(mm) of the Master Settlement Agreement, and that
14 pays the taxes specified in subsection II(z) of the
15 Master Settlement Agreement, and provided that the
16 manufacturer of such cigarettes does not market or
17 advertise such cigarettes in the United States),
18 b. is the first purchaser anywhere for resale in the
19 United States of cigarettes manufactured anywhere that
20 the manufacturer does not intend to be sold in the
21 United States, or
22 c. becomes a successor of an entity described in
23 subparagraph a or b.

24 The term "tobacco product manufacturer" shall not include an
25 affiliate of a tobacco product manufacturer unless such affiliate
26 itself falls within any of the provisions of subparagraphs a through
27 c of this paragraph; and

28 10. "Units sold" means the number of individual cigarettes sold
29 in the state by the applicable tobacco product manufacturer, whether
30 directly or through a distributor, retailer or similar intermediary
31 or intermediaries, during the year in question, as measured by
32 excise taxes collected by the state on packs, or "roll-your-own"

1 tobacco containers, bearing the excise tax stamp of the state. The
2 Oklahoma Tax Commission shall promulgate such rules as are necessary
3 to ascertain the amount of state excise tax paid on the cigarettes
4 of such tobacco product manufacturer for each year.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 600.23 of Title 37, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Any tobacco product manufacturer selling cigarettes to
9 consumers within the state, whether directly or through a
10 distributor, retailer or similar intermediary or intermediaries,
11 after the effective date of this act shall do one of the following:

12 1. Become a participating manufacturer, as that term is defined
13 in Section II(jj) of the Master Settlement Agreement, and generally
14 perform its financial obligations under the Master Settlement
15 Agreement; or

16 2. Place into a qualified escrow fund, by April 15 of the year
17 following the year in question, the following amounts, as such
18 amounts are adjusted for inflation:

19 a. 1999: ninety-four thousand two hundred forty-one one-
20 hundred-thousandths of one cent (\$.0094241) per unit
21 sold after the effective date of this act,

22 b. 2000: one hundred four thousand seven hundred twelve
23 one-hundred-thousandths of one cent (\$.0104712) per
24 unit sold,

25 c. for each of 2001 and 2002: one hundred thirty-six
26 thousand one hundred twenty-five one-hundred-
27 thousandths of one cent (\$.0136125) per unit sold,

28 d. for each of 2003 through 2006: one hundred sixty-
29 seven thousand five hundred thirty-nine one-hundred-
30 thousandths of one cent (\$.0167539) per unit sold, and

31 e. for each of 2007 and each year thereafter: one
32 hundred eighty-eight thousand four hundred eighty-two

1 one-hundred-thousandths of one cent (\$.0188482) per
2 unit sold.

3 B. A tobacco product manufacturer that places funds into escrow
4 pursuant to paragraph 2 of subsection A of this section shall
5 receive the interest or other appreciation on such funds as earned.
6 Such funds themselves shall be released from escrow only under the
7 following circumstances:

8 1. To pay a judgment or settlement on any released claim
9 brought against such tobacco product manufacturer by the state or
10 any releasing party located or residing in the state. Funds shall
11 be released from escrow under this paragraph:

- 12 a. in the order in which they were placed into escrow, and
- 13 b. only to the extent and at the time necessary to make
14 payments required under such judgment or settlement;

15 2. To the extent that a tobacco product manufacturer
16 establishes that the amount it was required to place into escrow in
17 a particular year was greater than the allocable share for the state
18 of the total payments that such manufacturer would have been
19 required to make in that year under the Master Settlement Agreement
20 (as determined pursuant to Section IX(i)(2) of the Master Settlement
21 Agreement, and before any of the adjustments or offsets described in
22 Section IX(i)(3) of that Agreement other than the Inflation
23 Adjustment) had it been a participating manufacturer, the excess
24 shall be released from escrow and revert back to such tobacco
25 product manufacturer; or

26 3. To the extent not released from escrow under paragraph 1 or
27 2 of this subsection, funds shall be released from escrow and revert
28 back to such tobacco product manufacturer twenty-five (25) years
29 after the date on which they were placed into escrow.

30 C. Each tobacco product manufacturer that elects to place funds
31 into escrow pursuant to paragraph 2 of subsection A of this section
32 shall annually certify to the Attorney General that it is in

1 compliance with paragraph 2 of subsection A of this section. The
2 Attorney General may bring a civil action on behalf of the state
3 against any tobacco product manufacturer that fails to place into
4 escrow the funds required under this section. Any tobacco product
5 manufacturer that fails in any year to place into escrow the funds
6 required under this section shall:

7 1. Be required within fifteen (15) days to place such funds
8 into escrow as shall bring it into compliance with this section.
9 The court, upon a finding of a violation of paragraph 2 of
10 subsection A or this subsection of this section, may impose a civil
11 penalty to be paid to the General Fund of the state in an amount not
12 to exceed five percent (5%) of the amount improperly withheld from
13 escrow per day of the violation and in a total amount not to exceed
14 one hundred percent (100%) of the original amount improperly
15 withheld from escrow;

16 2. In the case of a knowing violation, be required within
17 fifteen (15) days to place such funds into escrow as shall bring it
18 into compliance with this section. The court, upon a finding of a
19 knowing violation of paragraph 2 of subsection A or this subsection
20 of this section, may impose a civil penalty to be paid to the
21 General Fund of the state in an amount not to exceed fifteen percent
22 (15%) of the amount improperly withheld from escrow per day of the
23 violation and in a total amount not to exceed three hundred percent
24 (300%) of the original amount improperly withheld from escrow; and

25 3. In the case of a second knowing violation, be prohibited
26 from selling cigarettes to consumers within the state, whether
27 directly or through a distributor, retailer or similar intermediary,
28 for a period not to exceed two (2) years.

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

31 SECTION 4. This act shall become effective July 1, 1999.

32

1 SECTION 5. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5

6 47-1-6965 GH 6/11/15

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32