

**EHB 1601**

**THE STATE SENATE**  
**Tuesday, March 30, 1999**

**ENGROSSED**

**House Bill No. 1601**

**As Amended**

ENGROSSED HOUSE BILL NO. 1601 - By: VAUGHN, COLLINS, FIELDS, ASKINS,  
PHILLIPS, SULLIVAN (Leonard) and STAGGS of the House and ROBINSON of  
the Senate.

( tobacco - prohibiting certain acts - payment into escrow  
account - codification -

effective date )

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 600.13 of Title 37, unless there  
is created a duplication in numbering, reads as follows:

In accordance with the findings concerning youth and smoking,  
the following shall be unlawful acts:

1. There shall be no promotional programs for nontobacco goods  
using any type of tobacco product as a prize or give-away;

2. There shall be no tobacco product advertising in or on  
school facilities, school property, or school transportation;

3. There shall not be allowed as school attire any tobacco or  
tobacco-related merchandise or any tobacco logo on such merchandise;

4. There shall be no nontobacco item sold in this state, other  
than items packaged to resemble tobacco products which are used for

1 cessation purposes, designed to resemble tobacco products, including  
2 but not limited to bubblegum cigars and candy cigarettes;

3 5. There shall be no manufacture or sale of any pack or other  
4 container of cigarettes containing fewer than twenty cigarettes; and

5 6. All tobacco products may be displayed commercially behind  
6 the sales counter or at a height of forty-eight (48) inches or  
7 higher.

8 SECTION 2. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 600.21 of Title 37, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. The Oklahoma Legislature finds that cigarette smoking  
12 presents serious public health concerns to the State of Oklahoma and  
13 its citizens. The Oklahoma Legislature also finds that the Surgeon  
14 General has determined that smoking causes lung cancer, heart  
15 disease and other serious diseases, that there are hundreds of  
16 thousands of tobacco-related deaths in the United States each year,  
17 and that these diseases most often do not appear until many years  
18 after the person in question begins smoking.

19 B. The Oklahoma Legislature further finds that cigarette  
20 smoking also presents serious financial concerns for the State of  
21 Oklahoma, since under certain health-care programs, the state may  
22 have a legal obligation to provide medical assistance to eligible  
23 persons for health conditions associated with cigarette smoking,

1 those persons may have a legal entitlement to receive such medical  
2 assistance, and, under these programs, the State of Oklahoma pays  
3 millions of dollars each year to provide medical assistance for  
4 those persons for health conditions associated with cigarette  
5 smoking.

6 C. The Oklahoma Legislature additionally finds it is the policy  
7 of the State of Oklahoma that financial burdens imposed on the state  
8 by cigarette smoking should be borne by tobacco product  
9 manufacturers rather than by the State of Oklahoma to the extent  
10 that such manufacturers either determine to enter into a settlement  
11 with the state, or are found culpable by the courts, and that in  
12 1998, leading United States tobacco product manufacturers entered  
13 into a settlement agreement, entitled the "Master Settlement  
14 Agreement", with the state, which obligates these manufacturers, in  
15 return for a release of past, present and certain future claims  
16 against them as described therein, to pay substantial sums to the  
17 state; to fund a national foundation devoted to the interests of  
18 public health; and to make substantial changes in their advertising  
19 and marketing practices and corporate culture with the intention of  
20 reducing underage smoking.

21 D. The Oklahoma Legislature therefore finally finds it would be  
22 contrary to the policy of the State of Oklahoma if tobacco product  
23 manufacturers who determine not to enter into such a settlement

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

9 SECTION 3. 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;

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

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

6           a. any roll of tobacco wrapped in paper or in any  
7 substance not containing tobacco,

8           b. tobacco, in any form, that is functional in the  
9 product, which, because of its appearance, the type of  
10 tobacco used in the filler, or its packaging and  
11 labeling, is likely to be offered to, or purchased by,  
12 consumers as a cigarette, or

13          c. any roll of tobacco wrapped in any substance  
14 containing tobacco which, because of its appearance,  
15 the type of tobacco used in the filler, or its  
16 packaging and labeling, is likely to be offered to, or  
17 purchased by, consumers as a cigarette described in  
18 subparagraph a of this paragraph.

19 The term "cigarette" includes "roll-your-own" (i.e., any tobacco  
20 which, because of its appearance, type, packaging, or labeling is  
21 suitable for use and likely to be offered to, or purchased by,  
22 consumers as tobacco for making cigarettes). For purposes of this

1 definition of "cigarette", nine one-hundreths (0.09) ounces of  
2 "roll-your-own" tobacco shall constitute one individual "cigarette";

3 5. "Master Settlement Agreement" means the settlement agreement  
4 and related documents entered into in 1998 by the State of Oklahoma  
5 and leading United States tobacco product manufacturers;

6 6. "Qualified escrow fund" means an escrow arrangement with a  
7 federally chartered or state-chartered financial institution having  
8 no affiliation with any tobacco product manufacturer and having  
9 assets of at least One Billion Dollars (\$1,000,000,000.00) where  
10 such arrangement requires that such financial institution hold the  
11 escrowed fund principal for the benefit of releasing parties and  
12 prohibits the tobacco product manufacturer placing funds into escrow  
13 from using, accessing or directing the use of the fund principal  
14 except as consistent with Section 4 of this act;

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

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

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

22 a. manufactures cigarettes anywhere that such  
23 manufacturer intends to be sold in the United States,

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

19 The term "tobacco product manufacturer" shall not include an  
20 affiliate of a tobacco product manufacturer unless such affiliate  
21 itself falls within any of the provisions of subparagraphs a through  
22 c of this paragraph; and

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

10        SECTION 4.        NEW LAW        A new section of law to be codified  
11 in the Oklahoma Statutes as Section 600.23 of Title 37, unless there  
12 is created a duplication in numbering, reads as follows:

13        A. Any tobacco product manufacturer selling cigarettes to  
14 consumers within the state, whether directly or through a  
15 distributor, retailer or similar intermediary, after the effective  
16 date of this act, shall do one of the following:

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

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



- 1           a.    1999:  ninety-four thousand two hundred forty-one ten-  
2                    millionths of one cent (\$.0094241) per unit sold after  
3                    the effective date of this act,  
4           b.    2000:  one hundred four thousand seven hundred twelve  
5                    ten-millionths of one cent (\$.0104712) per unit sold  
6                    after the effective date of this act,  
7           c.    for each of 2001 and 2002:  one hundred thirty-six  
8                    thousand one hundred twenty-five ten-millionths of one  
9                    cent (\$.0136125) per unit sold after the effective  
10                  date of this act,  
11          d.    for each of 2003 through 2006:  one hundred sixty-  
12                  seven thousand five hundred thirty-nine ten-millionths  
13                  of one cent (\$.0167539) per unit sold after the  
14                  effective date of this act, and  
15          e.    for 2007 and each year thereafter:  one hundred  
16                  eighty-eight thousand four hundred eighty-two ten-  
17                  millionths of one cent (\$.0188482) per unit sold after  
18                  the effective date of this act.

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

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

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

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

19           3. To the extent not released from escrow under paragraph 1 or  
20 2 of this subsection, funds shall be released from escrow and revert  
21 back to such tobacco product manufacturer twenty-five (25) years  
22 after the date on which they were placed into escrow.

1 C. Each tobacco product manufacturer that elects to place funds  
2 into escrow pursuant to this section shall annually certify to the  
3 Attorney General that it is in compliance with this section. The  
4 Attorney General may bring a civil action on behalf of the state  
5 against any tobacco product manufacturer that fails to place into  
6 escrow the funds required under this section. Any tobacco product  
7 manufacturer that fails in any year to place into escrow the funds  
8 required under this section shall:

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

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

1 hundred percent (300%) of the original amount improperly withheld  
2 from escrow; and

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

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

9 SECTION 5. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 431 of Title 68, unless there is  
11 created a duplication in numbering, reads as follows:

12 A. As used in this section, the term "package" means a pack,  
13 carton, or container of any kind in which cigarettes are offered for  
14 sale, sold, or otherwise distributed, or intended for distribution,  
15 to consumers.

16 B. No tax stamp may be affixed to, or made upon, any package of  
17 cigarettes if:

18 1. The package differs in any respect with the requirements of  
19 the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.  
20 Section 1331, et seq., for the placement of labels, warnings, or any  
21 other information upon a package of cigarettes that is to be sold  
22 within the United States;

1           2. The package is labeled "For Export Only", "U.S. Tax Exempt",  
2 "For Use Outside U.S.", or similar wording indicating that the  
3 manufacturer did not intend that the product be sold in the United  
4 States;

5           3. The package, or a package containing individually stamped  
6 packages, has been altered by adding or deleting the wording,  
7 labels, or warnings described in paragraph 1 or 2 of this  
8 subsection;

9           4. The package has been imported into the United States after  
10 January 1, 2000, in violation of 26 U.S.C. Section 5754; or

11           5. The package in any way violates federal trademark or  
12 copyright laws.

13           C. Any person who sells or holds for sale cigarette packages to  
14 which is affixed a tax stamp in violation of subsection B of this  
15 section shall be guilty of a misdemeanor.

16           D. Notwithstanding any other provision of law, the Oklahoma Tax  
17 Commission may revoke any license issued under Article 4 of Title 68  
18 of the Oklahoma Statutes to any person who sells or holds for sale a  
19 cigarette package to which is affixed a tax stamp in violation of  
20 subsection B of this section.

21           E. Notwithstanding any other provision of law, the Oklahoma Tax  
22 Commission may seize and destroy or sell to the manufacturer, only

1 for export, packages that do not comply with subsection B of this  
2 section.

3 SECTION 6. This act shall become effective November 1, 1999.

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-24-99 - DO  
5 PASS, As Amended.