

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. \_\_\_\_\_

By: Robinson

AS INTRODUCED

An Act relating to public health and safety; creating the Tobacco Product Manufacturer's Responsibility Act; citing act; stating legislative findings and policy; defining terms; requiring tobacco product manufacturers to conform with provisions of certain agreement or to place certain amounts in escrow accounts; allowing tobacco product manufacturers to receive interest or other appreciation earned on escrow funds; providing for certain receipts and release of escrow funds only under certain conditions and according to certain time frame; requiring certain tobacco product manufacturers to annually certify compliance to the Attorney General; allowing the Attorney General to bring civil action for certain act; providing for penalties; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 339. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-660.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Tobacco Product Manufacturer's Responsibility Act".

B. The Legislature finds that:

1. Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking;

2. Cigarette smoking also presents serious financial concerns for the state. Under certain health care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance; and

3. Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

C. 1. It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state, to the extent that such manufacturers either decide to enter into a settlement with the state or are found culpable by the courts.

2. On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement", with the state. The Master Settlement Agreement obligates these manufactures, in return for a release of past, present and certain future claims against them as described therein:

- a. to pay substantial sums to the state that are related in part to their volume of sales,
- b. to fund a national foundation devoted to the interests of public health, and
- c. to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

3. It would be contrary to the policy of the state if tobacco product manufacturers who decide not to enter into such a settlement were to use any cost advantage resulting from the settlement agreement to derive large, short-term profits in the years before liability may arise, without ensuring for the state an eventual

source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-660.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

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

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

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

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

- a. any roll of tobacco wrapped in paper or in any substance not containing tobacco, or
- b. tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and

labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or

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

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

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

6. "Released claims" means that term as defined in the Master Settlement Agreement;

7. "Releasing parties" means that term as defined in the Master Settlement Agreement;

8. "Tobacco product manufacturer" means any entity that, after the date of enactment of this act, directly and not exclusively through any affiliate:

- a. manufactures cigarettes anywhere that such manufacturer intends the cigarettes to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where such importer is an original participating manufacturer, as defined in the Master Settlement

Agreement. Such entity will be responsible for payments under the Master Settlement Agreement, with respect to such cigarettes, as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and shall also pay the taxes specified in subsection II(z) of the Master Settlement Agreement; provided, however, such entity does not market or advertise such cigarettes in the United States,

- b. is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend the cigarettes to be sold in the United States, or
- c. becomes a successor of an entity described in subparagraph a or b of this paragraph.

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-660.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

2. a. Place into the General Revenue Fund by April 15 of the year following the year in question, the following amounts as such amounts, are adjusted for inflation:

(1) 1999: \$.0094241 per unit sold after the date of enactment of this act,

(2) 2000: \$.0104712 per unit sold after the date of enactment of this act,

(3) for each of 2001 and 2002: \$.0136125 per unit sold after the date of enactment of this act,

(4) for each of 2003 through 2006: \$.0167539 per unit sold after the date of enactment of this act, and

(5) for each of 2007 and each year thereafter: \$.0188482 per unit sold after the date of enactment of this act.

b. A tobacco product manufacturer that places amounts into such fund shall receive the interest or other appreciation on such amounts as earned. Such amounts themselves shall be released from the fund only under the following circumstances:

(1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party

located or residing in the state. Amounts shall be released from the fund under this subparagraph:

- (a) in the order in which they were placed into the fund, and
  - (b) only to the extent and at the time necessary to make payments required under such judgment or settlement,
- (2) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into the fund in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement, as determined pursuant to the provisions of section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment, had it been a participating manufacturer, the excess shall be released from the fund and revert back to such tobacco product manufacturer, or
- (3) to the extent not released from the fund under the provisions of division (1) or (2) of this subparagraph, amounts shall be released from the fund and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into the fund.

c. Each tobacco product manufacturer that elects to place amounts into the fund pursuant to the provisions of this subsection shall annually certify to the Attorney

General of this state that it is in compliance with the provisions of this subsection. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into the fund amounts required under this section. Any tobacco product manufacturer that fails in any year to place into the fund the amounts required under this section shall:

- (1) in the case of an unknowing violation, be required within fifteen (15) days of such annual certification date to place such amounts into the fund as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to also be paid to the General Revenue Fund of the State Treasury, in an amount not to exceed five percent (5%) of the amount improperly withheld from the fund per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from the fund,
- (2) in the case of a knowing violation, be required within fifteen (15) days of such annual certification date to place such amounts into the fund as shall bring it into compliance with the provisions of this section. The court, upon a finding of a knowing violation of the provision of this subparagraph, may impose a civil penalty, to be paid to the General Revenue Fund of the State Treasury, in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from the fund per day of the violation

and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from the fund, and

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

Each failure to make an annual deposit required under the provisions of this section shall constitute a separate violation.

SECTION 3. This act shall become effective July 1, 1999.

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

47-1-575

CJ

6/12/2015 1:47:40 AM