

1999 ASSEMBLY BILL 339

May 11, 1999 – Introduced by Representatives BOCK, URBAN, MILLER, LA FAVE, BOYLE, RICHARDS, TURNER, HUBER, YOUNG, KELSO, GOETSCH, WALKER, OLSEN, STONE and BERCEAU, cosponsored by Senators ROBSON, ROSENZWEIG, ROESSLER, RISSER, PANZER, DARLING, WIRCH, SCHULTZ, COWLES and CLAUSING. Referred to Committee on Judiciary and Personal Privacy.

1 **AN ACT to create** 895.10 of the statutes; **relating to:** an agreement between the
 2 state and tobacco product manufacturers.

Analysis by the Legislative Reference Bureau

On November 23, 1998, Wisconsin and other states agreed to a settlement of lawsuits brought against the major U.S. tobacco product manufacturers, the “master settlement agreement”. As part of that agreement, each state may enact model legislation that would affect tobacco product manufacturers that did not originally join in the master settlement agreement. This bill enacts the model legislation in Wisconsin. Under this bill, a tobacco product manufacturer that sells cigarettes in this state is given the choice of joining in the master settlement agreement and performing the obligations under that agreement or placing money into an escrow fund, based on the number of cigarettes sold each year. The amount of money to be placed into escrow per cigarette increases each year until the year 2007, when the amount is \$.0188482. The amount paid into escrow, under the bill, is intended to ensure that tobacco product manufacturers that do not participate in the master settlement agreement have funds available to satisfy judgments on the types of claims that were asserted in the state’s tobacco lawsuit. Under the bill, any interest in money in the escrow account accrues to the tobacco product manufacturer that put the money into escrow and any money remaining in the escrow account after 25 years is returned to the tobacco product manufacturer that put the money into escrow.

The bill permits the attorney general to bring a civil action against a tobacco product manufacturer that fails to put money into escrow as required. If a court finds that a tobacco product manufacturer failed to place the money into escrow, the bill

ASSEMBLY BILL 339

permits the court to impose a penalty of up to 5% of the amount improperly withheld from escrow for each day of the violation, up to 100% of the amount improperly withheld. If the court finds that a tobacco product manufacturer knowingly failed to place the money into escrow, the bill permits the court to impose a penalty of up to 15% of the amount improperly withheld from escrow for each day of the violation, up to 300% of the amount improperly withheld. The bill also provides that if a tobacco product manufacturer failed to place the money into escrow on two or more occasions, the court is required to prohibit the manufacturer from selling cigarettes in this state for up to two years.

The bill requires the department of administration to provide a copy of the master settlement agreement to each public library system in the state and requires the revisor of statutes to publish the master settlement agreement in the Wisconsin Administrative Register.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.10 of the statutes is created to read:

2 **895.10 Tobacco product agreement. (1) DEFINITIONS.** In this section:

3 (a) “Adjusted for inflation” means increased in accordance with the formula for
4 an inflation adjustment in exhibit C of the master settlement agreement.

5 (b) “Affiliate” means a person who directly or indirectly owns or controls, is
6 owned or controlled by or is under common ownership or control with, another
7 person. In this paragraph, “owns”, “owned” and “ownership” means ownership of an
8 equity interest, or the equivalent of an equity interest, of 10% or more.

9 (c) 1. “Cigarette” means any product that contains nicotine, is intended to be
10 burned or heated under ordinary conditions of use, and consists of or contains any
11 of the following:

12 a. Any roll of tobacco wrapped in paper or in any substance not containing
13 tobacco.

ASSEMBLY BILL 339

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

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

8 2. The term “cigarette” includes “roll-your-own” tobacco which, because of its
9 appearance, type, packaging or labeling is suitable for use and likely to be offered to,
10 or purchased by, consumers as tobacco for making cigarettes. For purposes of this
11 paragraph, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual
12 cigarette.

13 (d) “Consent decree” means the decree signed by this state in the case, State
14 of Wisconsin v. Phillip Morris, Inc., et al., Case No. 97-CV-328 Dane County Circuit
15 Court, dated December 4, 1998.

16 (e) “Master settlement agreement” means the settlement agreement and
17 related documents entered into on November 23, 1998, by this state and the leading
18 U.S. tobacco product manufacturers.

19 (f) 1. “Participating manufacturer” means a tobacco product manufacturer that
20 is or becomes a signatory to the master settlement agreement and that is bound by
21 the master settlement agreement.

22 (g) “Qualified escrow fund” means an escrow arrangement with a federally or
23 state chartered financial institution having no affiliation with any tobacco product
24 manufacturer and having assets of at least \$1,000,000,000 where the escrow
25 arrangement requires the financial institution to hold the escrowed funds’ principal

ASSEMBLY BILL 339**SECTION 1**

1 for the benefit of releasing parties, as defined in the master settlement agreement,
2 and prohibits the tobacco product manufacturer placing the funds into escrow from
3 using, accessing or directing the use of the funds' principal except as is consistent
4 with sub. (2) (b) 2. and 3.

5 (h) 1. "Tobacco product manufacturer" means an entity that after the effective
6 date of this paragraph [revisor inserts date], directly, and not exclusively through
7 any affiliate, meets any of the following criteria:

8 a. Manufactures cigarettes anywhere that the manufacturer intends to be sold
9 in the United States, including cigarettes intended to be sold in the United States
10 through an importer. This subdivision paragraph does not apply if the manufacturer
11 of the cigarettes does not market or advertise those cigarettes in the United States,
12 and the importer of those cigarettes is an original participating manufacturer, as
13 defined in the master settlement agreement, that will be responsible for the
14 payments under the master settlement agreement with respect to those cigarettes
15 and will pay excise taxes collected by the federal government with respect to those
16 cigarettes.

17 b. Is the first purchaser anywhere, for resale in the United States, of cigarettes
18 manufactured anywhere that the manufacturer did not intend to be sold in the
19 United States.

20 c. Becomes a successor of an entity described in subd. 1. a. or b.

21 2. "Tobacco product manufacturer" does not include an affiliate of a tobacco
22 product manufacturer unless the affiliate meets one of the criteria in subd. 1.

23 (i) "Units sold" means the number of individual cigarettes sold in this state by
24 the applicable tobacco product manufacturer, whether directly or through a
25 distributor, retailer or similar intermediary, during the year in question, as

ASSEMBLY BILL 339

1 measured by the excises taxes collected by this state on packs or “roll-your-own”
2 tobacco containers bearing the excise tax stamp of this state. The department of
3 revenue shall promulgate the regulations necessary to ascertain the amount of
4 Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer for
5 each year.

6 **(2) REQUIREMENTS.** (a) Any tobacco product manufacturer selling cigarettes to
7 consumers within this state, whether directly or through a distributor, retailer or
8 similar intermediary, after the effective date of this subsection [revisor inserts
9 date], shall do one of the following:

10 1. Become a participating manufacturer of the master settlement agreement
11 and generally perform its financial obligations under the master settlement
12 agreement.

13 2. Place into a qualified escrow fund by April 15 of the year following the listed
14 year the following amounts, as those amounts are adjusted for inflation:

15 a. For 1999: \$.0094241 per unit sold after the effective date of this subdivision
16 [revisor inserts date].

17 b. For 2000: \$.0104712 per unit sold.

18 c. For each of 2001 and 2002: \$.0136125 per unit sold.

19 d. For each of 2003 to 2006: \$.0167539 per unit sold.

20 e. For 2007 and each year thereafter: \$.0188482 per unit sold.

21 (b) A tobacco product manufacturer that places money into a qualified escrow
22 fund under par. (a) 2. shall receive the interest or other appreciation on that money
23 as earned. The money shall be released from the qualified escrow fund only under
24 one of the following circumstances:

ASSEMBLY BILL 339**SECTION 1**

1 1. To pay a judgment or settlement on any released claim, as defined in the
2 master settlement agreement, brought against the tobacco product manufacturer by
3 this state or any releasing party, as defined in the master settlement agreement,
4 located or residing in this state. Moneys shall be released from escrow under this
5 subdivision in the order in which they were placed into escrow and only to the extent
6 and at the time necessary to make payments required under the judgment or
7 settlement.

8 2. To the extent that a tobacco product manufacturer establishes that the
9 amount it was required to place into escrow in a particular year was greater than
10 2.072039% of the total payments that the manufacturer would have been required
11 to make in that year under the master settlement agreement, as determined under
12 subsection IX (i) (2) of the master settlement agreement, and before any of the
13 adjustments or offsets described in subsection IX (i) (3) of that agreement other than
14 the inflation adjustment had it been a participating manufacturer, the excess shall
15 be released from escrow and revert to the tobacco product manufacturer.

16 3. To the extent not released from escrow under subd. 1. or 2., money shall be
17 released from escrow and revert to the tobacco product manufacturer twenty-five
18 years after the date on which it was placed into the qualified escrow fund.

19 (c) 1. Each tobacco product manufacturer that elects to place money into a
20 qualified escrow fund under par. (a) 2. shall do so annually and shall certify to the
21 attorney general by April 15 that the tobacco product manufacturer has placed the
22 money into the qualified escrow fund in compliance with par. (a) 2.

23 2. Any tobacco product manufacturer that fails in any year to place into a
24 qualified escrow fund the money required under par. (a) 2. shall, within 15 days after

ASSEMBLY BILL 339

1 being notified of the deficiency, place sufficient money into a qualified escrow fund
2 to bring the tobacco product manufacturer into compliance with par. (a) 2.

3 3. The attorney general may bring a civil action on behalf of the state against
4 any tobacco product manufacturer that fails to place into the qualified escrow fund
5 the money required under this paragraph. The court, upon a finding of violation of
6 this paragraph, may impose a civil penalty in an amount not to exceed 5% of the
7 amount improperly withheld from escrow per day of the violation and in a total
8 amount not to exceed 100% of the original amount improperly withheld from a
9 qualified escrow fund. If a violation of this paragraph is knowing, the court may
10 impose a civil penalty in an amount not to exceed 15% of the amount improperly
11 withheld from escrow per day of the violation and in a total amount not to exceed
12 300% of the original amount improperly withheld from a qualified escrow fund.

13 4. If the court finds that a tobacco product manufacturer knowingly failed, for
14 the second or subsequent time, to place into a qualified escrow fund the money
15 required under par. (a) 2. the court shall prohibit the tobacco product manufacturer
16 from selling cigarettes to consumers within this state directly or through a
17 distributor, retailer or similar intermediary for a period not to exceed 2 years.

18 5. Each failure to make the annual deposit required under par. (a) 2. shall
19 constitute a separate violation.

SECTION 2. Nonstatutory provisions.

20
21 (1) COPIES OF THE MASTER SETTLEMENT AGREEMENT. The department of
22 administration shall provide a copy of the master settlement agreement to each
23 public library system, as defined in section 43.01 (5) of the statutes. “Master
24 settlement agreement” means the settlement agreement and related documents

ASSEMBLY BILL 339**SECTION 2**

1 entered into on November 23, 1998, by this state and the leading U.S. tobacco product
2 manufacturers.

3 (2) ADMINISTRATIVE REGISTER. The revisor of statutes shall, within 60 days after
4 the effective date of this subsection, publish a copy of the master settlement
5 agreement in the Wisconsin Administrative Register. “Master settlement
6 agreement” means the settlement agreement and related documents entered into on
7 November 23, 1998, by this state and the leading U.S. tobacco product
8 manufacturers.

9 (END)