

1999 DRAFTING REQUEST

Assembly Joint Resolution

Received: 01/13/99

Received By: nelsorp1

Wanted: Soon

Identical to LRB:

For: Bonnie Ladwig (608) 266-9171

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous
Courts - torts

Extra Copies:

Topic:

Memorial to congress to leave state tobacco settlement as is

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 01/14/99	jgeller 01/14/99	martykr 01/14/99	_____	lrb_docadmin 01/14/99	lrb_docadmin 01/19/99	

FE Sent For:

<END>

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Ladwig

Frequently Asked Questions about the Tobacco Settlement


Assembly on Federal Issues Health Committee

- 1. Who are the parties to the Tobacco Settlement?** The parties to the settlement include 46 states (Florida, Minnesota, Mississippi, and Texas had previously settled with the tobacco manufacturers), Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands and the District of Columbia, Brown & Williamson Tobacco corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, and Liggett & Myers.
- 2. What is the effective date of the tobacco settlement?** The parties signed the Master Settlement Agreement (MSA) on Monday, November 23, 1998, the Master Settlement Agreement Execution Date. States that have sued the tobacco manufacturers must go to state court and ask that the suits be dropped by December 11, 1998. States that did not have suits must go to state court to seek approval of the settlement agreement by December 23, 1998. The effective dates for the non-economic provisions of the MSA vary, but many are related to the MSA Execution date (e.g. 60 days after the MSA Execution date). There are two important effective dates related to the economic provisions of the MSA: the **State Specific Finality Date** and the **Final Approval Date**. The State Specific Finality Date is the date when a state court gives final approval to the settlement and the consent decree. The Final Approval Date is the *earlier* of June 30, 2000 or the date when 80 percent of the states have obtained State Specific Finality and those states represent 80% of the payments.
- 3. When do the settlement funds become available to the states?** No funds can be dispersed to the states until Final Approval is obtained. If the requisite number of states have not reached State Specific Finality before June 30, 2000, the funds will become available to all states that have reached State Specific Finality on June 30, 2000. ***If a state fails to obtain State Specific Finality by December 31, 2001, its participation in the settlement is terminated.***
- 4. I understand that tobacco manufacturers will begin making payments in December 1998. Where will these funds go if they are not available to states until June 2000?** The payments made by the tobacco manufacturers will be deposited into an escrow account. When a state obtains State Specific Finality, the funds that are to be allotted to that state will be moved from the general escrow account into a state specific escrow account, where the funds will accrue interest and will become available to the state on the Final Approval date.
- 5. What must states do to obtain State Specific Finality?** States must get the settlement approved by a state court. This includes approval of the consent decree. In addition, all opportunities for appeal of the approval must have expired, so that the court's approval is final.
- 6. What will state legislatures need to do to implement the tobacco settlement agreement?** State legislatures will need to enact the model statute included in the Master Settlement Agreement (See question #12), regarding the treatment of non-participating manufacturers, before the state begins receiving its allotment from the settlement. In addition, if there is any question about the legislative appropriation of the settlement funds, legislatures may want to enact laws to clarify the treatment of the funds under state law. The settlement agreement is silent on that issue. Finally, the legislature should probably review the state's consent decree, the document that implements the settlement agreement in the state.
- 7. What is the purpose of the model statute included in the Master Settlement Agreement? What happens if my state fails to enact the statute?** The model statute creates a reserve fund for non-participating manufacturers to pay future

claims, establishing a level playing field between participating and non-participating manufacturers. ***If a state fails to enact the model statute or if a state enacts the model and a court subsequently overturns it, the state allotment will be reduced by no more than 65 percent.***

8. **When the Final Approval Date arrives and the funds become available to the states, who controls the funds?** The Master Settlement Agreement is silent on the matter, therefore the general belief is that the funds will be appropriated according to state law.
9. **How are the amounts each state will receive determined? Are the state allotments listed in the Master Settlement Agreement the actual amounts each state will receive?** The state allotments were established by a formula developed by the Attorneys General. These allotments are subject to a number of adjustments, reductions and offsets. In addition, the federal government is laying claim to more than half the settlement dollars. The exact amount a state will receive is the net of the listed allocation minus any adjustments, reductions and offsets and may also be subject to recoupment of any settlement funds attributable to Medicaid.
10. **What is the basis of the federal claim on state tobacco settlement funds?** The U.S. Department of Health and Human Services (DHHS) contends that existing Medicaid law compels it to recover its share (federal Medicaid matching percentage) of third party payments, collected by states on behalf of Medicaid clients, and argues further that state tobacco settlement funds are third-party recoveries under the Medicaid statute. DHHS has "recouped" some funds from states that reached an earlier settlement agreement with the Liggett Group, but temporarily suspended the collection of state tobacco settlement funds pending comprehensive federal tobacco legislation. ***An amendment to the Medicaid statute that would exempt tobacco settlement funds from recoupment must be enacted to prevent the seizure of state tobacco settlement funds when they become available to states in 2000.***
11. **Does the Master Settlement Agreement restrict or earmark the settlement funds?** No. States will determine how the funds will be spent.
12. **If the federal government adopts an excise tax on tobacco products, will my state receive less money from the tobacco settlement?** Maybe. Under the provisions of the settlement, if the federal government enacts a tax or fee on tobacco products, and uses the proceeds to provide either unrestricted funds to states or funds earmarked for health care or tobacco-related health care, these funds would be subtracted from the state allotment on a dollar-for-dollar basis. The **federal legislation offset** would not apply if the funds were earmarked for assistance to tobacco growers or impacted communities.
13. **Aside from determining funding priorities and enactment of the model statute, are there other legislative actions related to the tobacco settlement state legislators might consider?** Yes. The settlement agreement prohibits the sale and manufacture of cigarettes in packages of less than 20 cigarettes. This prohibition sunsets December 31, 2001. The settlement agreement also prohibits tobacco manufacturers from opposing state legislation prohibiting the sale and manufacture of these small cigarette packages. If a state wants to continue the ban, considered a key provision to discourage youth access to cigarettes, state legislation would be required. In addition, the settlement agreement identifies areas of state legislation, law and administrative rule related to youth access to tobacco products, that the tobacco industry is prohibited from opposing. That list provides a starting point for considering future legislation. Finally, there is a wide range of youth access issues that are not addressed in the settlement agreement that could be the subject of state legislative initiatives.



 AFI Health Committee

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Phone: (202) 624-5400
FAX No.: (202) 737-1069



Please call the above number if you do not receive this entire fax.

Date: 1/13/99 Time: _____ # of pages 3

Fax to: Clark Radatz

Fax phone #: 608-266-5648

From: Steve Lewis Fax Code: 4482

Message: Hi Clark,

Here is Washington's resolution, which did not pass. Obviously,
you will have to update some of the wording now that
the AG's settlement doesn't need to go through Congress.

Please give me a call if you have any questions
(202) 624-3575

Steve

Have a Nice Day!

Session: Washington 55th Legislature
Bill Number: WA HJM 4037
Same As:
Version: Introduced
Version Date: 01/29/98
Bill Author: Dyer
Heading

HOUSE JOINT MEMORIAL 4037

State of Washington 55th Legislature 1998 Regular Session

By Representatives Dyer, Cody, Backlund, Skinner, Conway, Parlette, Wood,
Zellinsky and Anderson

Title

Code

Full Text

TO THE HONORABLE WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, AND
TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED
STATES, IN CONGRESS ASSEMBLED:

We, your Memorialists, the Senate and House of Representatives of the
State of Washington, in legislative session assembled, respectfully represent
and petition as follows:

WHEREAS, The state of Washington and other states have initiated
litigation against the tobacco industry seeking injunctive relief along with
the recovery of penalties and damages for the alleged illegal conduct of the
industry. Claims include the recovery of damages for violation of consumer
protection and antitrust laws, for common law conspiracy, and for expenditure
of public funds for health care services; and

WHEREAS, The tobacco industry has agreed to a proposed global settlement
of the states' litigation which includes the recovery by states of
substantial damages. The proposed settlement has been referred to congress
for implementation; and

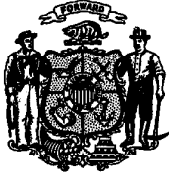
WHEREAS, Since the states have initiated litigation and settlement of
legal claims for violation of a number of state laws, they should recover
their full measure of damages in the proposed settlement without any offset
or withholding by the federal government. Specifically, the Federal
Department of Health and Human Services does not and should not have a claim
to any portion of the funds received by the states as damages, based on
receipt by the states of federal funds for Medicaid costs;

NOW, THEREFORE, Your Memorialists respectfully pray that congress enact
legislation which would specify that no portion of the funds received by the
states as part of the global settlement or any other resolution of tobacco
litigation be withheld, offset, or claimed by the federal government, the
Department of Health and Human Services, or any other federal agency.

BE IT RESOLVED, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

Digest

IHPP Information
System Information



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1759/1

RPN.....

JKG

1999 ASSEMBLY JOINT RESOLUTION

- 1 **Relating to:** [✓]requesting [✓]Congress to enact legislation that would specify that [✓]no
2 portion of the money received by the states as part of the settlement with
3 tobacco companies ^{may} be withheld, offset or claimed by the federal government. [✓]
4 Whereas, the state of [✓]Wisconsin, together with 45 other states, has initiated
5 litigation against the tobacco industry seeking damages and other relief for the
6 alleged misconduct of the tobacco industry; and
7 Whereas, the claims against the tobacco industry include the recovery of
8 damages for the violation of consumer protection and antitrust laws, for common law
9 conspiracy and for the expenditure of public funds for health care services; and
10 Whereas, the tobacco industry has agreed to a proposed settlement of the states'
11 litigation, which includes the states' recovery of substantial money damages; and
12 Whereas, the states, which initiated the litigation and settlement of legal
13 claims for the violation of a number of state laws by the tobacco industry, should
14 recover the full amount of damages in the proposed settlement without any offset or
15 withholding [✓]by the federal government; and

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/14/99

To: Representative Ladwig

Relating to LRB drafting number: LRB-1759

Topic

Memorial to congress to leave state tobacco settlement as is

Subject(s)

Courts - miscellaneous, Courts - torts

1. **JACKET** the draft for introduction

Bonnie Ladwig

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511