

1999 DRAFTING REQUEST

Bill

Received: **01/28/2000**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB: **99-4322/2**

For: **Charles Chvala (608) 266-9170**

By/Representing: **Doug Burnett**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies: **Barb Zabawa, LFB**

Pre Topic:

No specific pre topic given

Topic:

Tobacco settlement state- company agreement

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>
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/1			jfrantze 01/28/2000	_____	lrb_docadmin 01/28/2000		

FE Sent For:

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1/?	nelsorp1	cmh 1	JG 1/28	JG/Ch 1/28			

FE Sent For:

1/28

<END>

Chavala Package

1999 - 2000 LEGISLATURE

44421
LRB-4822/2

RPN:cmh:kjf

1999 BILL

*refer
cut*

1 **AN ACT to amend 814.04 (intro.); and to create 895.10 of the statutes; relating**
2 **to: an agreement between the state and tobacco product manufacturers and**
3 **granting rule-making authority.**

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

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.

BILL

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 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 court to award the attorney general costs and reasonable attorney fees if he or she prevails in the lawsuit.

The bill requires the department of administration (DOA) 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.** 814.04 (intro.) of the statutes is amended to read:

2 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
3 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.10
4 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and
5 943.51 (2) (b), when allowed, costs shall be as follows:

6 **SECTION 2.** 895.10 of the statutes is created to read:

7 **895.10 Tobacco product agreement. (1) DEFINITIONS.** In this section:

8 (a) "Adjusted for inflation" means increased in accordance with the formula for
9 an inflation adjustment set forth in exhibit C of the master settlement agreement.

10 (b) "Affiliate" means a person who directly or indirectly owns or controls, is
11 owned or controlled by or is under common ownership or control with, another
12 person. Solely for the purposes of this definition, "owns", "is owned" and "ownership"
13 mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and

BILL

1 the term “person” means an individual, partnership, committee, association,
2 corporation or any other organization or group of persons.

3 (c) “Allocable share” means allocable share as that term is defined in the master
4 settlement agreement.

5 (d) 1. “Cigarette” means any product that contains nicotine, is intended to be
6 burned or heated under ordinary conditions of use, and consists of or contains any
7 of the following:

8 a. Any roll of tobacco wrapped in paper or in any substance not containing
9 tobacco.

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

13 c. Any roll of tobacco wrapped in any substance containing tobacco which,
14 because of its appearance, the type of tobacco used in the filler, or its packaging and
15 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described
16 in subd. 1. a.

17 2. The term “cigarette” includes “roll-your-own” tobacco, which is tobacco that,
18 because of its appearance, type, packaging or labeling, is suitable for use and likely
19 to be offered to, or purchased by, consumers as tobacco for making cigarettes.

20 3. For purposes of this definition of “cigarette”, 0.09 ounces of “roll-your-own”
21 tobacco constitutes one individual “cigarette”.

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

BILL

1 (f) "Qualified escrow fund" means an escrow arrangement with a federally or
2 state chartered financial institution having no affiliation with any tobacco product
3 manufacturer and having assets of at least \$1,000,000,000, which arrangement
4 requires that the financial institution hold the escrowed funds' principal for the
5 benefit of releasing parties and prohibits the tobacco product manufacturer placing
6 the funds into escrow from using, accessing or directing the use of the funds' principal
7 except as is consistent with sub. (2) (b) 2.

8 (g) "Released claims" means released claims as that term is defined in the
9 master settlement agreement.

10 (h) "Releasing parties" means releasing parties as that term is defined in the
11 master settlement agreement.

12 (i) 1. "Tobacco product manufacturer" means an entity that after the effective
13 date of this subdivision [revisor inserts date], directly, and not exclusively through
14 any affiliate:

15 a. Manufactures cigarettes anywhere, which the manufacturer intends to be
16 sold in the United States, including cigarettes intended to be sold in the United
17 States through an importer, except that "tobacco product manufacturer does not
18 include an entity that manufactures cigarettes that it intends to be sold in the United
19 States if those cigarettes are sold in the United States exclusively through an
20 importer that is an original participating manufacturer, as defined in the master
21 settlement agreement, that will be responsible for the payments under the master
22 settlement agreement with respect to those cigarettes as a result of the provisions
23 of subsection II (mm) of the master settlement agreement and that pays the taxes
24 specified in subsection II (z) of the master settlement agreement, and the

BILL

1 manufacturer of those cigarettes does not market or advertise those cigarettes in the
2 United States;

3 b. Is the first purchaser anywhere for resale in the United States, of cigarettes
4 manufactured anywhere that the manufacturer did not intend to be sold in the
5 United States; or

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

7 2. "Tobacco product manufacturer" does not include an affiliate of a tobacco
8 product manufacturer unless the affiliate itself falls within subd. 1. a., b. or c.

9 (j) "Units sold" means the number of individual cigarettes sold in this state by
10 the applicable tobacco product manufacturer, whether directly or through a
11 distributor, retailer or similar intermediary, during the year in question, as
12 measured by the excise taxes collected by this state on containers of "roll-your-own"
13 tobacco and on packs of cigarettes bearing the excise tax stamp of this state.

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

18 (a) Become a participating manufacturer, as that term is defined in section II
19 (jj) of the master settlement agreement, and generally perform its financial
20 obligations under the master settlement agreement; or

21 (b) 1. Place into a qualified escrow fund by April 15 of the year following the
22 listed year the following amounts, as those amounts are adjusted for inflation:

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

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

BILL

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

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

3 e. For each year after 2006: \$.0188482 per unit sold.

4 2. A tobacco product manufacturer that places money into escrow under subd.
5 1. shall receive the interest or other appreciation on that money as earned. The
6 money placed into escrow shall be released from escrow only under the following
7 circumstances:

8 a. To pay a judgment or settlement on any released claim brought against that
9 tobacco product manufacturer by this state or any releasing party located or residing
10 in this state. Moneys shall be released from escrow under this paragraph in the order
11 in which they were placed into escrow and only to the extent and at the time
12 necessary to make payments required under the judgment or settlement.

13 b. To the extent that a tobacco product manufacturer establishes that the
14 amount it was required to place into escrow in a particular year was greater than the
15 state's allocable share of the total payments that the manufacturer would have been
16 required to make in that year under the master settlement agreement had it been
17 a participating manufacturer, as those payments are determined under section IX
18 (i) (2) of the master settlement agreement and before any of the adjustments or
19 offsets described in section IX (i) (3) of that agreement other than the inflation
20 adjustment, the excess shall be released from escrow and revert to that tobacco
21 product manufacturer.

22 c. To the extent not released from escrow under subd. 2. a. or b., money shall
23 be released from escrow and revert to the tobacco product manufacturer twenty-five
24 years after the date on which the money was placed into escrow.

BILL

1 3. Each tobacco product manufacturer that elects to place money into escrow
2 under subd. 1. shall annually certify to the attorney general by each April 15 that the
3 tobacco product manufacturer is in compliance with subds. 1. and 2. The attorney
4 general may bring a civil action on behalf of the state against any tobacco product
5 manufacturer that fails to place into escrow the moneys required under this
6 subsection. Any tobacco product manufacturer that fails in any year to place into
7 escrow the money required under subd. 1. shall:

8 a. Be required within 15 days to place money into escrow as shall bring the
9 tobacco product manufacturer into compliance with this subsection. The court, upon
10 a finding of violation of this paragraph, may impose a civil penalty in an amount not
11 to exceed 5% of the amount improperly withheld from escrow per day of the violation
12 and in a total amount not to exceed 100% of the original amount improperly withheld
13 from escrow.

14 b. In the case of a knowing violation, be required within 15 days to place such
15 funds into escrow as shall bring it into compliance with this subsection. The court,
16 upon a finding of a knowing violation of this paragraph, may impose a civil penalty
17 in an amount not to exceed 15% of the amount improperly withheld from escrow per
18 day of the violation and in a total amount not to exceed 300% of the original amount
19 improperly withheld from escrow.

20 c. In the case of a second or subsequent knowing violation, be prohibited from
21 selling cigarettes to consumers within this state directly or through a distributor,
22 retailer or similar intermediary for a period not to exceed 2 years.

23 4. Each failure to make an annual deposit required under this subsection shall
24 constitute a separate violation.

BILL

1 (3) AWARDS OF COSTS AND ATTORNEY FEES. If the attorney general is the prevailing
2 party in an action under this section, the court shall award the attorney general costs
3 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

4 (4) PROMULGATION OF RULES. The department of revenue shall promulgate the
5 rules necessary to ascertain the amount of Wisconsin excise tax paid on the cigarettes
6 of each tobacco product manufacturer for each year.

SECTION 9158. Nonstatutory provisions; other.

7
8 (1) COPIES OF THE MASTER SETTLEMENT AGREEMENT. The department of
9 administration shall provide a copy of the master settlement agreement to each
10 public library system, as defined in section 43.01 (5) of the statutes. "Master
11 settlement agreement" means the settlement agreement and related documents
12 entered into on November 23, 1998, by this state and the leading U.S. tobacco product
13 manufacturers.

14 (2) ADMINISTRATIVE REGISTER. The revisor of statutes shall, within 60 days after
15 the effective date of this subsection, publish a copy of the master settlement
16 agreement in the Wisconsin Administrative Register. "Master settlement
17 agreement" means the settlement agreement and related documents entered into on
18 November 23, 1998, by this state and the leading U.S. tobacco product
19 manufacturers.

(3) EXCISE TAX PAID ON CIGARETTES; RULES.

20
21 (a) Using the procedure under section 227.24 of the statutes, the department
22 of revenue shall submit in proposed form the rules required under section 895.10 (4)
23 of the statutes, as created by this act, to the legislative council under section 227.15
24 (1) of the statutes no later than the first day of the 4th month beginning after the
25 effective date of this paragraph.

Barman, Mike

From: Barman, Mike
Sent: Friday, January 28, 2000 2:08 PM
To: Burnett, Douglas
Subject: 99-4442/1



99-4442/1

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4442/1
RPN:cmh:jf

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12 likely to be offered to, or purchased by, consumers as a cigarette.

13 c. Any roll of tobacco wrapped in any substance containing tobacco which,
14 because of its appearance, the type of tobacco used in the filler, or its packaging and
15 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described
16 in subd. 1. a.

17 2. The term “cigarette” includes “roll-your-own” tobacco, which is tobacco that,
18 because of its appearance, type, packaging or labeling, is suitable for use and likely
19 to be offered to, or purchased by, consumers as tobacco for making cigarettes.

20 3. For purposes of this definition of “cigarette”, 0.09 ounces of “roll-your-own”
21 tobacco constitutes one individual “cigarette”.

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

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6 the funds into escrow from using, accessing or directing the use of the funds' principal
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9 master settlement agreement.

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11 master settlement agreement.

12 (i) 1. "Tobacco product manufacturer" means an entity that after the effective
13 date of this subdivision [revisor inserts date], directly, and not exclusively through
14 any affiliate:

15 a. Manufactures cigarettes anywhere, which the manufacturer intends to be
16 sold in the United States, including cigarettes intended to be sold in the United
17 States through an importer, except that "tobacco product manufacturer does not
18 include an entity that manufactures cigarettes that it intends to be sold in the United
19 States if those cigarettes are sold in the United States exclusively through an
20 importer that is an original participating manufacturer, as defined in the master
21 settlement agreement, that will be responsible for the payments under the master
22 settlement agreement with respect to those cigarettes as a result of the provisions
23 of subsection II (mm) of the master settlement agreement and that pays the taxes
24 specified in subsection II (z) of the master settlement agreement, and the

BILL

1 manufacturer of those cigarettes does not market or advertise those cigarettes in the
2 United States;

3 b. Is the first purchaser anywhere for resale in the United States, of cigarettes
4 manufactured anywhere that the manufacturer did not intend to be sold in the
5 United States; or

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

7 2. "Tobacco product manufacturer" does not include an affiliate of a tobacco
8 product manufacturer unless the affiliate itself falls within subd. 1. a., b. or c.

9 (j) "Units sold" means the number of individual cigarettes sold in this state by
10 the applicable tobacco product manufacturer, whether directly or through a
11 distributor, retailer or similar intermediary, during the year in question, as
12 measured by the excise taxes collected by this state on containers of "roll-your-own"
13 tobacco and on packs of cigarettes bearing the excise tax stamp of this state.

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

18 (a) Become a participating manufacturer, as that term is defined in section II
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20 obligations under the master settlement agreement; or

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17 a participating manufacturer, as those payments are determined under section IX
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13 from escrow.

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23 of the statutes, as created by this act, to the legislative council under section 227.15
24 (1) of the statutes no later than the first day of the 4th month beginning after the
25 effective date of this paragraph.

