

**BILL HISTORY FOR SENATE BILL 122 (LRB-1661 )**

An Act to create 895.10 of the statutes; relating to: an agreement between the state and tobacco product manufacturers.

1999

04-21. S.	Introduced by Senators <b>Rosenzweig, Robson, Wirch, Panzer, Roessler, Risser, Cowles, Darling, Schultz and Clausing</b> ; cosponsored by Representatives <b>Bock, Urban, Huber, Kelso, Goetsch, Walker, Olsen, Stone, Miller, La Fave and Berceau.</b>	
04-21. S.	Read first time and referred to committee on Human Services and Aging .....	124
05-19. S.	Public hearing held.	
08-04. S.	Fiscal Estimate requested.	
08-26. S.	Fiscal estimate received.	
08-31. S.	Fiscal estimate received.	
09-13. S.	Fiscal estimate received.	
09-20. S.	Fiscal estimate received.	
09-21. S.	Fiscal estimate received.	
09-23. S.	Executive action taken.	
09-28. S.	Report introduction and adoption of Senate substitute amendment 1 recommended by committee on Human Services and Aging, Ayes 5, Noes 0 ( <del>LRB s0105</del> ) .....	273
09-28. S.	Report passage as amended recommended by committee on Human Services and Aging, Ayes 5, Noes 0 .....	2/3
09-28. S.	Available for scheduling.	
10-26. S.	Read a second time .....	300
10-26. S.	Referred to joint committee on Finance .....	300

2000

03-02. S.	Executive action taken.	
03-07. S.	Report introduction and adoption of Senate amendment 1 to Senate substitute amendment 1 recommended by joint committee on Finance, Ayes 16, Noes 0 ( <del>LRB s1579</del> ) .....	464
03-07. S.	Report Senate substitute amendment 1 adoption recommended by joint committee on Finance, Ayes 16, Noes 0 .....	464
03-07. S.	Report passage as amended recommended by joint committee on Finance, Ayes 16, Noes 0 ...	464
03-07. S.	Available for scheduling.	
03-14. S.	Read a second time .....	497
03-14. S.	Senate amendment 1 to Senate amendment 1 to Senate substitute amendment 1 offered by Senator <b>Rosenzweig</b> ( <del>LRB s1036</del> ) .....	497
03-14. S.	Senate amendment 1 to Senate amendment 1 to Senate substitute amendment 1 adopted .....	497
03-14. S.	Senate amendment 1 to Senate substitute amendment 1 adopted .....	497
03-14. S.	Senate substitute amendment 1 adopted .....	497
03-14. S.	Ordered to a third reading .....	497
03-14. S.	Rules suspended .....	497
03-14. S.	Read a third time and passed .....	497
03-14. S.	Ordered immediately messaged .....	502
03-21. A.	Received from Senate .....	793
03-21. A.	Read first time.	
03-21. A.	Rules suspended and taken up .....	793
03-21. A.	Read a second time .....	793
03-21. A.	Ordered to a third reading .....	793
03-21. A.	Rules suspended .....	793

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03-21. A. Read a third time and concurred in .....	793
03-21. A. Ordered immediately messaged .....	793
03-23. S. Received from Assembly concurred in .....	519

**1999  
ENROLLED BILL**

99en SB-122

**ADOPTED DOCUMENTS:**

Orig     Engr

5 SubAmdt 1

99 501051 2

Amendments to above (if none, write "NONE"):

SAI to SAI, SAI

Corrections - show date (if none, write "NONE"):

None

Topic

An agreement between the  
State and tobacco product  
manufacturers

3/23/00

Date

Peter R. Ryan

Enrolling Drafter

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 1999 SENATE BILL 122**

September 28, 1999 - Offered by COMMITTEE ON HUMAN SERVICES AND AGING.

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.

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

4 **SECTION 1.** 814.04 (intro.) of the statutes is amended to read:

5 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),  
6 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.10  
7 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and  
8 943.51 (2) (b), when allowed, costs shall be as follows:

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

10 **895.10 Tobacco product agreement. (1) DEFINITIONS.** In this section:

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

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to SAI

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

7 (c) "Allocable share" means allocable share as that term is defined in the master  
8 settlement agreement.

9 (d) 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.

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

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

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

24 3. For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own"  
25 tobacco constitutes one individual "cigarette".

1 (e) "Master settlement agreement" means the settlement agreement and  
 2 related documents entered into on November 23, 1998, by this state and the leading  
 3 U.S. tobacco product manufacturers.

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

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

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

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

17 a. Manufactures cigarettes anywhere, which the manufacturer intends to be  
 18 sold in the United States, including cigarettes intended to be sold in the United  
 19 States through an importer, except that "tobacco product manufacturer does not  
 20 include an entity that manufactures cigarettes that it intends to be sold in the United  
 21 States if those cigarettes are sold in the United States exclusively through an  
 22 importer that is an original participating manufacturer, as defined in the master  
 23 settlement agreement, that will be responsible for the payments under the master  
 24 settlement agreement with respect to those cigarettes as a result of the provisions  
 25

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3-22 SAI

1 of subsection II (mm) of the master settlement agreement and that pays the taxes  
2 specified in subsection II (z) of the master settlement agreement, and the  
3 manufacturer of those cigarettes does not market or advertise those cigarettes in the  
4 United States;

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

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

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

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

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

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

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

year in question SAI

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

3 ~~b. For 2000: \$.0104712 per unit sold.~~

4 ~~b.  For each of 2001 and 2002: \$.0136125 per unit sold.~~

5 ~~c.  For each of 2003 to 2006: \$.0167539 per unit sold.~~

6 ~~d.  For each year after 2006: \$.0188482 per unit sold.~~

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2. A tobacco product manufacturer that places money into escrow under subd.

8 1. shall receive the interest or other appreciation on that money as earned. The  
9 money placed into escrow shall be released from escrow only under the following  
10 circumstances:

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

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

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

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

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

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

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

7-8 SAI to SAI

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

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

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

9           **SECTION 3. Nonstatutory provisions.**

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

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

22           (3) EXCISE TAX PAID ON CIGARETTES; RULES.

23           (a) Using the procedure under section 227.24 of the statutes, the department  
24 of revenue shall submit in proposed form the rules required under section 895.10  
25 of the statutes, as created by this act, to the legislative council under section 227.15

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(4)

1 (1) of the statutes no later than the first day of the 4th month beginning after the  
2 effective date of this paragraph.

(4) SAH

3 (b) Using the procedure under section 227.24 of the statutes, the department  
4 of revenue may promulgate rules required under section 895.10 ~~(9)~~ of the statutes,  
5 as created by this act, for the period before the effective date of the rules submitted  
6 under paragraph (a), but not to exceed the period authorized under section 227.24  
7 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)  
8 of the statutes, the department is not required to provide evidence that promulgating  
9 a rule under this paragraph as an emergency rule is necessary for the preservation  
10 of the public peace, health, safety or welfare and is not required to provide a finding  
11 of emergency for a rule promulgated under this paragraph.

12

(END)

**SENATE AMENDMENT 1,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO 1999 SENATE BILL 122**

March 7, 2000 - Offered by JOINT COMMITTEE ON FINANCE.

(A)

1 At the locations indicated, amend the substitute amendment as follows:

2 ~~15X~~ Page 3, line 20: delete that line and substitute "States through an importer;

3-20 except that".

4 2. Page 3, line 21: delete "include".

5 3. Page 3, line 22: before "if those" insert "shall not be considered a tobacco

3-22 product manufacturer under this chapter".

7 4. Page 4, line 5: substitute "anywhere," for "anywhere".

8 5. Page 4, line 6: delete "did" and substitute "does".

9 6. Page 4, line 24: delete "listed year" and substitute "year in question".

10 7. Page 5, line 1: delete lines 1 and 2.

11 8. Page 5, line 3: delete that line and substitute:

paragraph SAI to SAI

1 "a. For 2000: \$.0104712 per unit sold after the effective date of this subd. 1. a.

2 ... [revisor inserts date].

S-3

3 **9.** Page 5, line 4: delete "c." and substitute "b."

4 **10.** Page 5, line 5: delete "d." and substitute "c."

5 **11.** Page 5, line 6: delete "e." and substitute "d."

6 **12.** Page 7, line 24: substitute "(4)" for "(3)".

7 **13.** Page 8, line 4: substitute "(4)" for "(3)".

8 (END)

2-5(B) explain SAI to SAI

**SENATE AMENDMENT 1,  
TO SENATE AMENDMENT 1,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO 1999 SENATE BILL 122**

March 14, 2000 – Offered by Senator ROSENZWEIG.

1 At the locations indicated, amend the amendment as follows:

2 **1.** Page 1, line 1: after that line insert:

3 ~~“1m. Page 1, line 12: delete “an””.~~ A

4 **2.** Page 1, line 2: delete “1” and substitute “1s”.

5 **3.** Page 1, line 6: delete “chapter” and substitute “paragraph”.

6 **4.** Page 2, line 5: after that line insert:

7 ~~“1m. Page 7, line 8: after “manufacturer” insert “that elects to place funds into~~

8 escrow under this section”

9 (END)

7-8  
INS B