

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

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 inflation adjustment set forth in exhibit C of the master settlement agreement.

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
17 through any affiliate:

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

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

5 b. Is the first purchaser anywhere, for resale in the United States, of cigarettes
6 manufactured anywhere that the manufacturer does 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 year in question the following amounts, as those amounts are adjusted for inflation:

1 a. For 2000: \$.0104712 per unit sold after the effective date of this subd. 1. a.
2 [revisor inserts date].

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

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

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

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

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

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

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 that elects to place funds into escrow under
9 this section for each year.

10 **SECTION 3. Nonstatutory provisions.**

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

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

23 **(3) EXCISE TAX PAID ON CIGARETTES; RULES.**

24 **(a)** Using the procedure under section 227.24 of the statutes, the department
25 of revenue shall submit in proposed form the rules required under section 895.10 (4)

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

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

13 (END)