

1999 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB122)

Received: 07/20/1999

Received By: nelsorp1

Wanted: Soon

Identical to LRB:

For: Judy Robson (608) 266-2253

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Level playing field for tobacco settlement companies

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>
/P1	nelsorp1 07/21/1999	chanaman 07/21/1999		_____			
/1			kfollet 07/21/1999	_____	lrb_docadmin 07/21/1999	lrb_docadmin 07/21/1999	
/2	nelsorp1 09/21/1999	chanaman 09/22/1999	jfrantze 09/22/1999	_____	lrb_docadmin 09/22/1999	lrb_docadmin 09/22/1999	

FE Sent For: 07/21/1999.

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/P1	nelsorp1 07/21/99	chanaman 07/21/99		_____			
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FE Sent For:

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<END>

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WOW
D-NOTE
SENATE SUBSTITUTE AMENDMENT
to
1999 SENATE BILL 122

April 21, 1999 - Introduced by Senators ROSENZWEIG, ROBSON, WIRCH, PANZER, ROESSLER, RISSER, COWLES, DARLING, SCHULTZ and CLAUSING, cosponsored by Representatives BOCK, URBAN, HUBER, KELSO, GOETSCH, WALKER, OLSEN, STONE, MILLER, LA FAVE and BERCEAU. Referred to Committee on Human Services and Aging.

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

and granting rule-making authority

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

SENATE BILL 122

~~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 ^{set forth} 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. ^{Solely for the purposes of this definition,} In this paragraph, "owns", "owned" and "ownership" means ^{is} ownership of an
8 equity interest, or the equivalent of an equity interest, of 10% or more.

insert
2-99

→ 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.

and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons

SENATE BILL 122

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 ~~the master settlement agreement~~ *subd. 1. a*

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. ^{(P) 3.} For purposes of this
11 *definition of "cigarette"* 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. ⁹¹

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. *and attached to the consent decree*

19 (f) "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* *which that* requires the financial institution ^{or} to hold the escrowed funds' principal

SENATE BILL 122

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~~^{moneys} 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.~~

insert 4-4

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

8 a. Manufactures ^{anywhere} 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~~ ^{except where that} the importer ~~of these 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. ^{insert 4-16}

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. ^{a, b, or c.}

23 (B) "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 ^{maries}

[Handwritten notes and signatures at the bottom of the page, including "maries" and "a, b, or c."]

SENATE BILL 122

1 measured by the excises taxes collected by this state on ~~packs of~~ ^{containers of} "roll-your-own"
 2 tobacco ~~containers~~ ^{and on packs of cigarettes} bearing the excise tax stamp of this state. ^{rules} The department of
 3 revenue shall promulgate the ~~regulations~~ ^{rules} necessary to ascertain the amount of
 4 Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer for
 5 each year. *move to page 7, after line 19.*

6 (2) REQUIREMENTS. ~~Any~~ 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: *as that term is defined in section 22(3)*

10 (a) ~~Be~~ Become a participating manufacturer of the master settlement agreement,
 11 and generally perform its financial obligations under the master settlement
 12 agreement.

13 (b) ~~Place~~ 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 *paragraph*
 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 ~~A~~ ^{2.} A tobacco product manufacturer that places money into a ~~qualified~~ escrow
 22 ~~fund~~ ^{subd. 1.} under ~~paragraph~~ shall receive the interest or other appreciation on that money
 23 as earned. ^{That} The money shall be released from ~~the qualified~~ escrow ~~fund~~ only under
 24 one of the following circumstances:

SENATE BILL 122

SECTION 1

1 a. ~~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~~ ^{that}
 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~~ ^{paragraph} 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 b. ~~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 ~~20%~~ ^{the state's allocable share} of the total payments that the manufacturer would have been required
 11 to make in that year under the master settlement agreement, ^{those payments are} 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~~ ^{that} tobacco product manufacturer.

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

19 ~~Each~~ ^{3.} tobacco product manufacturer that elects to place money into a
 20 ~~qualified~~ ^{subd. 1.} escrow ~~fund~~ under ~~subd. 1~~, 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~~ ^{subd. 1} in compliance with ~~subd. 1~~. Insert 6-22

23 ~~Any~~ ^{No. 19} tobacco product manufacturer that fails in any year to place into ~~a~~
 24 ~~qualified~~ ^{subd. 1} escrow ~~fund~~ and the money required under ~~subd. 1~~, shall, within 15 days after

do all of the following: (A) Be required

SENATE BILL 122

1 ~~being notified of the deficiency~~ place sufficient money into ~~qualified~~ escrow fund
2 ~~to bring the tobacco product manufacturer into compliance with~~ ^{as shall} ~~paragraph~~ ^{this paragraph} (No. 9)

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~~ ^(insert 7-10) 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 ~~qualified~~ escrow fund.)

13 4. ^{P.C. In the case of a} 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~~ ^{knowing violation, be prohibited} 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 ⁴ 5. Each failure to make the annual deposit required under ~~paragraph~~ ^{subd. 1} shall
19 constitute a separate violation.

20 SECTION 2. Nonstatutory provisions.

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

(3) ³ Promulgation of RULES. ⁽⁵⁾ ^(insert from New Page)
5, lines 2-8

SENATE BILL 122

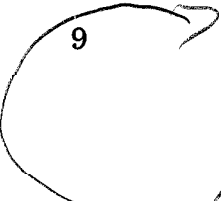
SECTION 2

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)



(3) (Insert 8-8)

manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate ~~itself falls within any of (1) - (3) above.~~ *insert H-21*

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The [fill in name of responsible state agency] shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section __. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) ~~become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement)~~ and generally perform its financial obligations under the Master Settlement Agreement; or *insert 5-10*

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: \$.0094241 per unit sold after the date of enactment of this Act;

2000: \$.0104712 per unit sold after the date of enactment of this Act;

for each of 2001 and 2002: \$.0136125 per unit sold after the date of enactment of this Act;

for each of 2003 through 2006: \$.0167539 per unit sold after the date of enactment of this Act;

for each of 2007 and each year thereafter: \$.0188482 per unit sold after the date of enactment of this Act.

(2) ~~A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1)~~ shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances -- *insert 5-22*

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and

Each failure to make an annual deposit required under this section shall constitute a separate violation.

EXHIBIT U

STRATEGIC CONTRIBUTION FUND PROTOCOL

The payments made by the Participating Manufacturers pursuant to section IX(c)(2) of the Agreement ("Strategic Contribution Fund") shall be allocated among the Settling States pursuant to the process set forth in this Exhibit U.

Section 1

A panel committee of three former Attorneys General or former Article III judges ("Allocation Committee") shall be established to determine allocations of the Strategic Contribution Fund, using the process described herein. Two of the three members of the Allocation Committee shall be selected by the NAAG executive committee. Those two members shall choose the third Allocation Committee member. The Allocation Committee shall be geographically and politically diverse.

Section 2

Within 60 days after the MSA Execution Date, each Settling State will submit an itemized request for funds from the Strategic Contribution Fund, based on the criteria set forth in Section 4 of this Exhibit U.

Section 3

The Allocation Committee will determine the appropriate allocation for each Settling State based on the criteria set forth in Section 4 below. The Allocation Committee shall make its determination based upon written documentation.

Section 4

The criteria to be considered by the Allocation Committee in its allocation decision include each Settling State's contribution to the litigation or resolution of state tobacco litigation, including, but not limited to, litigation and/or settlement with tobacco product manufacturers, including Liggett and Myers and its affiliated entities.

Section 5

Within 45 days after receiving the itemized requests for funds from the Settling States, the Allocation Committee will prepare a preliminary decision allocating the Strategic Contribution Fund payments among the Settling States who submitted itemized requests for funds. All Allocation Committee decisions must be by majority vote. Each Settling State will have 30 days to submit comments on or objections to the draft decision. The Allocation Committee will issue a final decision allocating the Strategic Contribution Fund payments within 45 days.

Section 6

EXHIBIT T**MODEL STATUTE****Section __. Findings and Purpose.**

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On _____, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section __. Definitions.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, ^{insert 2-7} is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the

INSERTS

insert 2-8

equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

insert 2-9

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette ~~described in clause (1) of this definition~~. The term "cigarette" includes "roll-your-own", which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

that
insert 2-9

which is

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on _____, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section ___(b)-(c) of this Act.

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

insert 4-4

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and ~~provided that~~ the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States.

insert 4-16

if

(2) is the first purchaser anywhere for resale in the United States of cigarettes

(ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General [or other State official] that it is in compliance with this subsection. ~~The Attorney General [or other State official]~~ may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the ~~funds~~ ^{moneys} required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall --

Insert 622

no 2

Paragraph

Insert 622

A. be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

Insert 9-10

~~(B)~~ ^{b. In} the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

Paragraph

1 use 2 times

Insert 9-10

~~(C)~~ in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0105/?ins
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insert 8-8:

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

(a) Using the procedure under section 227.24 of the statutes, the department of revenue shall submit in proposed form the rules required under section 895.10 (3) of the statutes, as created by this act, to the legislative council under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this paragraph. ✓
check spacing

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

~~(b)~~
(a)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0105/?dn
RPN.....

cmj

I made a number of changes in this draft to make the model proposed statute comply with Wisconsin requirements, although none of the changes made should, or are intended to, change the substance of the model proposed statute. The changes fit within the "particularized state procedural or technical requirements" allowed by the agreement to meet the definition of a model statute. The changes are:

1. The Wisconsin constitution requires that the proceeds of fines go into the school fund, so the model language requiring the proceeds to go to the general fund was removed.

2. The model statute uses the term "funds" as another word for "money", but in Wisconsin the term "funds" refers to the various accounts where certain moneys are deposited, such as the veterans trust fund, the general fund, the transportation fund and the lottery fund. Chapter 25 of the statutes is devoted to defining and managing those funds. To avoid confusion, I substituted "money" for "funds".

3. I moved the requirement to promulgate rules, not regulations, in a separate subsection (3) of section 895.10, rather than in a definition. In this state, definitions are not to include substantive authority, such as to create rules. I also added language as a nonstatutory section putting a time limit on producing the rules and allowing the department of revenue to promulgate emergency rules before the final rules are promulgated.

4. Section 990.001 (1) of the statutes provides that the singular includes the plural and the plural includes the singular, so I removed the phrase "or intermediaries" used with "intermediary or intermediaries" as unnecessary.

5. I renumbered the units of the model to be consistent with the Wisconsin statutory numbering system, which requires every statutory unit to be numbered.

6. Throughout the draft I replaced the word "such" when it was used instead of "the", "that" or "those" and instead used those words.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0105/1dn
RPN:cmh:kjf

July 21, 1999

I made a number of changes in this draft to make the model proposed statute comply with Wisconsin requirements, although none of the changes made should, or are intended to, change the substance of the model proposed statute. The changes fit within the "particularized state procedural or technical requirements" allowed by the agreement to meet the definition of a model statute. The changes are:

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6. Throughout the draft I replaced the word "such" when it was used instead of "the", "that" or "those" and instead used those words.

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

EXHIBIT T**MODEL STATUTE****Section __. Findings and Purpose.**

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On _____, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section __. Definitions.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

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

equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on _____, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section ___(b)-(c) of this Act.

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes

manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1) - (3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The [fill in name of responsible state agency] shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section __. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: \$.0094241 per unit sold after the date of enactment of this Act;

2000: \$.0104712 per unit sold after the date of enactment of this Act;

for each of 2001 and 2002: \$.0136125 per unit sold after the date of enactment of this Act;

for each of 2003 through 2006: \$.0167539 per unit sold after the date of enactment of this Act;

for each of 2007 and each year thereafter: \$.0188482 per unit sold after the date of enactment of this Act.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances --

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and

(ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General [or other State official] that it is in compliance with this subsection. The Attorney General [or other State official] may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall --

A. be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

EXHIBIT U

STRATEGIC CONTRIBUTION FUND PROTOCOL

The payments made by the Participating Manufacturers pursuant to section IX(c)(2) of the Agreement ("Strategic Contribution Fund") shall be allocated among the Settling States pursuant to the process set forth in this Exhibit U.

Section 1

A panel committee of three former Attorneys General or former Article III judges ("Allocation Committee") shall be established to determine allocations of the Strategic Contribution Fund, using the process described herein. Two of the three members of the Allocation Committee shall be selected by the NAAG executive committee. Those two members shall choose the third Allocation Committee member. The Allocation Committee shall be geographically and politically diverse.

Section 2

Within 60 days after the MSA Execution Date, each Settling State will submit an itemized request for funds from the Strategic Contribution Fund, based on the criteria set forth in Section 4 of this Exhibit U.

Section 3

The Allocation Committee will determine the appropriate allocation for each Settling State based on the criteria set forth in Section 4 below. The Allocation Committee shall make its determination based upon written documentation.

Section 4

The criteria to be considered by the Allocation Committee in its allocation decision include each Settling State's contribution to the litigation or resolution of state tobacco litigation, including, but not limited to, litigation and/or settlement with tobacco product manufacturers, including Liggett and Myers and its affiliated entities.

Section 5

Within 45 days after receiving the itemized requests for funds from the Settling States, the Allocation Committee will prepare a preliminary decision allocating the Strategic Contribution Fund payments among the Settling States who submitted itemized requests for funds. All Allocation Committee decisions must be by majority vote. Each Settling State will have 30 days to submit comments on or objections to the draft decision. The Allocation Committee will issue a final decision allocating the Strategic Contribution Fund payments within 45 days.

Section 6

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State of Wisconsin
1999 - 2000 LEGISLATURE

P. 04

LEB00104/1
EPN:mhhjff

**SENATE SUBSTITUTE AMENDMENT,
TO 1999 SENATE BILL 192**

1 **AN ACT to create 895.10 of the statutes relating to an agreement between the**
2 **state and tobacco product manufacturers and granting rule-making authority.**

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

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

4 **895.10 Tobacco product agreement. (1) DEFINITIONS. In this section:**

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

7 (b) "Affiliate" means a person who directly or indirectly owns or controls, is
8 owned or controlled by or is under common ownership or control with, another
9 person. Solely for the purposes of this definition, "owns", "is owned" and "ownership"
10 mean ownership of an equity interest, or the equivalent of ^{thereof} ~~ownership~~ interest, of 10%
11 or more, and the term "person" means an individual, partnership, committee,
12 association, corporation or any other organization or group of persons.

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FAX NO.

1999-2000 Legislature

178-0109/1
178-0109/2
178-0109/3

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

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

6 a. Any roll of tobacco wrapped in paper or in any substance not containing
7 tobacco.

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

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

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

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

20 (e) "Master settlement agreement" means the settlement agreement and
21 related documents entered into on November 28, 1998, by this state and the leading
22 U.S. tobacco product manufacturer, and attached to the consent decree, signed by
23 this state in the case, State of Wisconsin v. Phillip Morris, Inc., et al., Case No.
24 97-CV-028 Dane County Circuit Court, dated December 4, 1998.

meaning any tobacco which,

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1999 - 2000 Legislature

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UNIVERSITY
SECTION 1

- 9 -

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 ^{where the arrangement} which requires that the
 4 financial institution hold the escrowed funds' principal for the benefit of releasing
 5 parties and prohibits the tobacco product manufacturer placing the ^{funds} ~~escrow~~ into
 6 escrow from using, accessing or directing the use of the funds' principal except as is
 7 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 ~~or~~ (reviser inserts date), directly, and not exclusively through
 14 any affiliate, ~~means~~ ^{is} ~~the following criteria:~~ ^{(3) Such}

Act

15 a. Manufacturer ~~anywhere~~ ^{of} cigarettes that the manufacturer intends to be sold
 16 in the United States, including cigarettes intended to be sold in the United States
 17 through an importer, ^{of such} ~~except~~ importer is an original participating
 18 manufacturer, as defined in the master settlement agreement, that will be
 19 responsible for the payments under the master settlement agreement with respect
 20 to those cigarettes as a result of the provisions of subsection (m) of the master
 21 settlement agreement and that pays the taxes specified in subsection (s) of the
 22 master settlement agreement, and ^{provided that} ~~the~~ manufacturer of those cigarettes does not
 23 market or advertise those cigarettes in the United States.

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P. 06

1999 - 2000 Legislature

- 4 -

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Section 1

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

4 c. Becomes a successor of an entity described in subd. 1. a. or b.
5 2. "Tobacco product manufacturer" does not include an affiliate of a tobacco
6 product manufacturer unless the affiliate ^{itself falls within} meets subd. 1. a., b. or c.

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

13 (3). REQUIREMENTS. Any tobacco product manufacturer selling cigarettes to
14 consumers within this state, whether directly or through a distributor, retailer or
15 similar intermediary, after the effective date of this subsection ^{Act} ~~and before the effective~~
16 ~~date~~, shall do one of the following:

17 (a) Become a participating manufacturer, as that term is defined in section 11
18 (j) of the master settlement agreement, and generally perform its financial
19 obligations under the master settlement agreement, ^{or}

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

22 a. For 1999: \$0.0094241 per unit sold after the effective date of this subsection
23 ~~paragraph and previous inserts date.~~

24 b. For 2000: \$0.0104712 per unit sold.

25 c. For each of 2001 and 2002: \$0.0136125 per unit sold.

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1999 - 2000 Legislature

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- 5 -

F. 08
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1 *each of*
 2 d. For each of 2008 to 2009: \$0.167539 per unit sold.
 3 e. For 2007 and each year thereafter: \$0.159483 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. That
 6 money shall be released from escrow only under ~~the~~ *the* following circumstances:
 7 a. To pay a judgment or settlement on any released claim brought against that
 8 tobacco product manufacturer by this state or any releasing party located or residing
 9 in this state. Moneys shall be released from escrow under this paragraph in the order
 10 in which they were placed into escrow and only to the extent and at the time
 11 necessary to make payments required under the judgment or settlement.
 12 b. To the extent that a tobacco product manufacturer establishes that the
 13 amount it was required to place into escrow in a particular year was greater than the
 14 state's allocable share of the total payments that the manufacturer would have been
 15 required to make in that year under the master settlement agreement, had it been
 16 a participating manufacturer, as those payments are determined under subsection
 17 IX (1) (2) of the master settlement agreement, and before any of the adjustments or
 18 offsets described in subsection IX (1) (3) of that agreement other than the Inflation
 19 Adjustment, the excess shall be released from escrow and revert to that tobacco
 20 product manufacturer.
 21 c. To the extent not released from escrow under subd. 2. a. or b., money shall
 22 be released from escrow and revert to the tobacco product manufacturer twenty-five
 23 years after the date on which the money was placed into escrow.
 24 3. Each tobacco product manufacturer that elects to place money into escrow
 25 under subd. 1. shall annually certify to the attorney general by April 15 that the
 tobacco product manufacturer is in compliance with subd. 1. The attorney general

Subds 1 and 2

That would make more sense

Shouldn't it be "each April 15"?

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1999 - 2000 Legislature

- 6 -
Subdivision (a)

1 may bring a civil action on behalf of the state against any tobacco product
2 manufacturer that fails to place into escrow the moneys required under this

3 ~~paragraph.~~ Any tobacco product manufacturer that fails in any year to place into
4 escrow the money required under ^{subdivision (2)} shall do all of the following:

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

11 b. In the case of a knowing violation, be required within 15 days to place such
12 funds into escrow as shall bring it into compliance with this paragraph. The court,
13 upon a finding of a knowing violation of this paragraph, may impose a civil penalty
14 in an amount not to exceed 15% of the amount improperly withheld from escrow per
15 day of the violation and in a total amount not to exceed 800% of the original amount
16 improperly withheld from escrow.

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

20 4. Each failure to make ^{an} annual deposit required under ~~section~~ ^{subdivision (2)} shall
21 constitute a separate violation.

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

25 SECTION 2. Nonstatutory provisions.

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1999 - 2000 Legislature

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- 7 -

SECTION 3

1 (1) ~~Copies of THE MASTER SETTLEMENT AGREEMENT~~ The department of
 2 administration shall provide a copy of the master settlement agreement to each
 3 public library system, as defined in section 48.01 (5) of the statutes. "Master
 4 settlement agreement" means the settlement agreement and related documents
 5 entered into on November 23, 1998, by this state and the leading U.S. tobacco product
 6 manufacturers, *as it may be amended from time to time.*

7 (2) ~~ADMINISTRATIVE REGISTER~~ The revisor of statutes shall, within 60 days after
 8 the effective date of this subsection, publish a copy of the master settlement
 9 agreement in the Wisconsin Administrative Register. "Master settlement
 10 agreement" means the settlement agreement and related documents entered into on
 11 November 23, 1998, by this state and the leading U.S. tobacco product
 12 manufacturers, *as it may be amended from time to time.*

(8) EXCESS TAX PAID ON CIGARETTES; RULES.

13 (a) Using the procedure under section 227.24 of the statutes, the department
 14 of revenue shall submit in proposed form the rules required under section 895.10 (8)
 15 of the statutes, as created by this act, to the legislative council under section 227.15
 16 (1) of the statutes no later than the first day of the 4th month beginning after the
 17 effective date of this paragraph.

18 (b) Using the procedure under section 227.24 of the statutes, the department
 19 of revenue may promulgate rules required under section 895.10 (8) of the statutes,
 20 as created by this act, for the period before the effective date of the rules submitted
 21 under paragraph (a), but not to exceed the period authorized under section 227.24
 22 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)
 23 of the statutes, the department is not required to provide evidence that promulgating
 24 a rule under this paragraph as an emergency rule is necessary for the preservation
 25

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1999 - 2000 Legislature

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SECTION 2

- 8 -

1 of the public peace, health, safety or welfare and is not required to provide a finding
2 of emergency for a rule promulgated under this paragraph.

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Nelson, Robert P.

From: Rose, Laura
Sent: Friday, July 30, 1999 3:52 PM
To: Nelson, Robert P.
Cc: Mason, Cory; Schaeffer, Gene; Kennedy, Debora
Subject: LRB 0105/1, relating to an agreement between the state and tobacco product manufacturers

Hi Bob,

I tried to call you this week and Debora said you were out of the office! I hope you were doing something fun!

Anyway, I went through the substitute amendment, and I jotted down some comments. I'm forwarding them to you in the attachment. Most of my comments have to do with cross-referencing. I'm not trying to be picky; I just want to be sure that the sub and the proposed model statute refer to the same things. After you read this over, please give me a call if you have any questions. FYI - I will be gone from Wednesday, August 4th through Wednesday, August 16th.

Thanks!



Comments on Senate
Substitute ...

Laura Rose
Senior Staff Attorney
Wisconsin Legislative Council Staff
One East Main Street, Suite 401
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Madison, WI 53701-2536
Phone: (608) 266-9791; Fax: (608) 266-3830
laura.rose@legis.state.wi.us

Comments on Senate Substitute Amendment (LRB 0105/1) to 1999 Senate Bill 122

1. The drafter's note indicates it is more appropriate to use the term "moneys" rather than the term "funds" because, in Wisconsin, the term "funds" refers to the various accounts where certain moneys are deposited, such as the veterans trust fund, the lottery fund, etc. However, it appears that the statutes are replete with the use of the word "funds" as another word for "money", as is done in the model proposed statute. Given that, can't the proposed model statute's use of the word "funds" as another word for "money" be retained in the substitute amendment?
2. On page 4, line 21, the term "listed year" is used instead of the proposed model statute's use of the term "the year in question". Presumably, these terms mean the same thing, that is, the year which is referred to in each subparagraph a to e. However, wouldn't it be safer to just use the same terminology as is used in the proposed model statute, as clumsy as it may be?
3. On page 5, lines 11-19, "subsection IX(i)(2) is cross referenced. The proposed model statute cross-references "section IX(i)(2) of the master settlement agreement. For clarity, wouldn't it be better to use the same cross-reference as is used in the proposed model statute?
4. On page 5, line 24 and 25, and page 6, line 4, "subd. 1" is cross-referenced. I'm not sure if it's cross-referencing the same provision that the proposed model statute is cross-referencing. The proposed model statute, in the same provision, seems to cross-reference a different provision. Would the correct cross-reference be "par. (b)" rather than "subd. 1"?
5. On page 6, lines 3,6,7,12,and 13, "this paragraph" is referred to, while in the proposed model statute, "this section" or "this subsection" is referred to in similar places. Maybe the cross-references in the proposed model statute are just screwed up. However, when the proposed model statute references "this section" it seems like the analogous cross reference in the substitute amendment should be "this subsection", and when the proposed model statute references "this subsection", the analogous cross reference in the substitute amendment should be "this paragraph".

These are my major comments. Please give me a call if you have any questions, or would like to discuss this.

Laura Rose
Leg. Council
266-9791
July 30, 1999

True -
but clearer?
Made one
change req.
by tab.
etc.
OK
I think it
is - subd. 1.
requires putting
money into escrow
see p 4. L204
& p 5, L405
I agree -
in some
places "paragraph"
should be
"subsection"
but in
others,
better to
use "subd."
1. or 2. "9"

MEMORANDUM

August 2, 1999

To: Edwin Hughes

From: Jeff Wintner

David Remes is on vacation and asked me to review the draft legislation you faxed him so that we could get back to you promptly. I've marked problem areas by hand. Please feel free to call me if you have any questions.



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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ATTORNEY GENERAL**

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FACSIMILE TRANSMISSION

DATE: August 6, 1999

TO: Cory Mason, Sen. Robson's Office
Bob Nelson, LRB

**7-5171
4-8522**

FROM: Edwin J. Hughes
Assistant Attorney General
Wisconsin Department of Justice

No. of Pages (including cover sheet): 10

I enclose the response I received from one of the attorneys for the Tobacco companies to the substitute bill. As you can tell, his suggestions go in the direction of making the substitute resemble the model statute more closely. Bob - if there are suggestions you particularly disagree with and would like me to discuss with this attorney, let me know and I will try to do so (though I will be out of the office next week). Personally, I do not have problems with what he suggests.

**If you have trouble receiving this transmission, please contact:
Kathy Phone: 608-267-1930**



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**JAMES F. DOYLE
ATTORNEY GENERAL**

**Burnetta L. Bridge
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FACSIMILE TRANSMISSION

DATE: August 6, 1999

TO: Cory Mason, Sen. Robson's Office
Gene Schaeffer, Sc. Rosenzweig's Office
Bob Nelson, LRB
Laura Rose, Leg. Council

FROM: Edwin J. Hughes
Assistant Attorney General
Wisconsin Department of Justice

RE: Senate Substitute Amendment to 1999 Senate Bill 122

No. of Pages (including cover sheet): 4

7-5171
7-0367
4-8522
6-3830

**If you have trouble receiving this transmission, please contact:
Kathy Phone: 608-267-1930**



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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Aug 11, 1999

MEMORANDUM

To: Senator Judy Robson, attn.: Cory Mason
Senator Peggy Rosenzweig, attn.: Gene Schaeffer
Ed Hughes, Assistant Attorney General
Laura Rose, Legislative Council

From: Robert Nelson, Senior Legislative Attorney

Subject: Senate Substitute Amendment to 1999 Senate Bill 122

These are my comments regarding the comments from Laura Rose and from the attorney representing the tobacco companies:

Page 1, line 10: changing from "of an equity interest" to "thereof" is OK.

Page 2, line 15: adding ", meaning any" before "tobacco" is confusing when added to that definition after the use of the word "includes". It would be better to say "'roll-your-own' tobacco, which is tobacco that," rather than the language in the draft or the language proposed by the tobacco attorney.

Page 2, lines 22-24: deleting the reference to the consent decree makes the definition less concise, but is OK.

Page 3, line 3: replacing "which" with "where the arrangement" is incorrect. Grammatically, "where" refers denotes a place. The "where" in this instance refers to the agreement, not to a place. By using "where", the reader may be confused into thinking that it refers to a financial institution where the money is placed. Changing the "which" to "that" would probably be even better.

Page 3, line 5: changing "moneys" to "funds" is consistent with Laura Rose's first comment and fits well in this sentence. The tobacco attorney had no problem with my other substitutions of "moneys" for "funds".

Page 3, line 13: replacing "subdivision....[revisor inserts date]". Under Wisconsin drafting conventions, the statutory unit that is referred to when an act's date is specified is the unit (here, a subdivision) in which the date will occur. This bill has an effective date, so the effective date of the subdivision is identical to the effective date of the act. In Wisconsin, the "[revisor inserts date]" is an instruction to the Revisor of Statutes to insert the appropriate date into the statutes. Therefore,

Wisconsin's codified statutes contain actual dates, rather than referring to "the effective date of the Act". so a person does not need to find the number of the act that created the statute and then go to that act to find the effective date.

Page 3, line 14; deleting the "meets any of the following:" and substituting a semicolon is incorrect grammar and could potentially create legal problems if a court is unable to determine if all, some or only one of the conditions must be met. Our drafting manual requires an introductory paragraph to end with a colon followed by a list, using phrases such as "any of the following" to avoid this problem. Further, a semicolon separates independent clauses and the clause in question is not an independent clause.

Page 3, line 15: reversing "anywhere cigarettes" to "cigarettes anywhere" is confusing—using "anywhere" in that way makes the "anywhere" refer to where the manufacturer intends the cigarettes to be sold, rather than where the manufacturing is done, which I think is the intent. The Colorado act has the language as proposed in this draft.

Page 3, line 15 and 17: substituting "such" for "the" is incorrect grammatically. Our drafting manual requires that we avoid using "such" in place of an article.

Page 3, lines 17 and 23: putting parenthesis from "except" to the end of the sentence serves the same function as the comma and does not make the sentence less lengthy or confusing.

Page 3, line 20: making "subsections" singular is correct.

Page 3, line 22: substituting "provided that" for "if" is OK.

Page 4, line 1: removing the first comma is OK.

Page 4, line 6: substituting "falls within" for "meets" is OK. I would not ^{add} "itself" because it is redundant.

Page 4, line 10: making "excises" singular is correct.

Page 4, lines 15 and 16: See note to page 3, line 13.

Page 4, line 19: substituting a semicolon for a period is incorrect when there is an introductory paragraph and a list. See note to page 3, line 14. Because the introduction specifies "one of the following", the "or" is unnecessary.

Page 4, line 21, substituting "in question" for "listed" as suggested by Laura Rose is OK.

Page 4, lines 22 and 23: See note to page 3, line 13.

Page 5, line 2: adding "each of" before "2007" is incorrect grammatically, since there is only one year 2007.

Page 5, line 5: adding "itself" after "money" is wordy and is an improper use of the reflexive pronoun; the money is not releasing itself.

Page 5, line 5: deleting "one of". See note to page 3, line 14.

Page 5, line 14 and 16: removing the comma does not create a problem.

accordingly. However, I do need to add a time frame on when DOA needs to send a copy of the agreement to the libraries. Is 60 days after enactment OK, as is drafted for the publication of the agreement by the Revisor of Statutes?

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: August 19, 1999

To: Senator Judy Robson, attn.: Cory Mason
Senator Peggy Rosenczweig, attn.: Gene Schacffer
Robert Nelson, Legislative Reference Bureau
Laura Rose, Legislative Council

From: Edwin J. Hughes
Assistant Attorney General

Subject: Senate Substitute Amendment to 1999 Senate Bill 122

For what it is worth, here are my views on the remaining points of disagreement between the attorney for the tobacco companies and Bob Nelson on the language of the proposed substitute amendment to 1999 Senate Bill 122. In general, it seems to me that the most prudent approach is to follow the model statute, inelegant as it may be, except in those cases where the model statute language creates genuine problems.

Page 2, line 15: I believe the change was suggested by the tobacco attorney because the use of the term "which" could be read to imply that some "roll-your-own" tobacco is not included in the definition of "cigarette." Bob's suggestion in his 8/11 memo seems to accurately capture the meaning of the model statute: "The term 'cigarette' includes 'roll-you-own,' which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes." I think this language should be used.

* Page 3, line 3. It appears that the point of the change recommended by the tobacco attorney is to make it clear that the antecedent of the "which" in line 3 is the escrow arrangement rather than the federally or state chartered financial institution. Changing "which" to "where the arrangement" makes this clear. I think it is far-fetched to suppose that readers might be confused by the use of "where" into thinking that it refers to a financial institution where the money is placed.

Page 3, line 13; page 4, lines 15-16; page 4, lines 22-23: Bob's explanation makes sense to me.

* Page 3, line 14: I believe the tobacco attorney's suggestion (consistent with the model statute) is to eliminate "meets any of the following criteria," insert a colon after affiliate, insert a semicolon after "in the United States" on line 23, and change page 4, line 3 from "United States." to "United States; or". I understand that the drafting manual recommends the use of phrases such as "any of the following" and I agree that is the form that is used most commonly in the statutes. However, there are many statutes that include a series of phrases separated by semicolons, with the conjunction "or" or "and" introducing the final phrase. See, e.g., §§

Senator Judy Robson, attn.: Cory Mason, Senator Peggy Rosenzweig, attn.: Gene Schaeffer, Robert Nelson, Legislative Reference Bureau, Laura Rose, Legislative Council

August 19, 1999

Page 2

196.493(2); 196.497(1)(c); 885.44(2); 944.21(2)(c); and 961.01(1). There is no ambiguity about what is intended by such a construction. In this case, I see no harm in following the model statute.

Page 3, line 15: The model statute says "manufactures cigarettes anywhere." I do not see the point of changing this to "manufactures anywhere cigarettes," which sounds to me like a locution uttered by one for whom English is a second language. As for the rest of this paragraph, I suggest that we use alternative language that was provided to me earlier by one of the tobacco attorneys:

a. Manufactures cigarettes anywhere which the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered to be a tobacco product manufacturer under this [subparagraph?] if (i) those cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to those cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and (ii) the manufacturer of those cigarettes does not market or advertise those cigarettes in the United States.

Page 4, line 6: I think "itself" should be included, both because it is included in the model statute and because it makes clear that the affiliate must satisfy the specified provisions when considered on a stand-alone basis and not just when the affiliate is considered as part of the larger entity.

Page 4, line 19: I see no harm in including the semicolon and "or", as the tobacco attorney recommends.

Page 5, line 2: I do not see a problem with including "each of" as the tobacco attorney recommends and as is included in the model statute. The "each of" refers to "2007 and each year thereafter" and so is not grammatically incorrect. The purpose of including the term is to prevent an argument that the subdivision may be satisfied by making a single deposit of \$.0188482 per unit sold to cover all the years in question.

*Jowa did out way **

Yes PG

Page 5, line 5: "Itself" should be included to be consistent with the model statute and to distinguish the money from the interest or other appreciation on that money that is referred to in the previous sentence.

*Cal. changed **

Yes PG

ND agreed

Senator Judy Robson, attn.: Cory Mason, Senator Peggy Rosenzweig, attn.: Gene Schaeffer, Robert Nelson, Legislative Reference Bureau, Laura Rose, Legislative Council

August 19, 1999

Page 3

take out "one of"

Not mutually exclusive

Page 5, line 5: For the same reasons as pertain to page 3, line 14, I do not see a problem with removing "one of." In addition, money may be released from escrow for more than one reason. The possibilities mentioned are not mutually exclusive. So the insertion of "one of" may be inappropriate on that basis.

Page 5, lines 17-18: I agree with Bob that "inflation adjustment" should not be capitalized.

oh, but not a clear

Page 6, line 3: The tobacco attorney recommends changing "paragraph" to "subdivision (2)." Laura Rose suggests that it should be "subsection" rather than "paragraph." Bob disagrees, stating that this would sweep in par. (a) of sub. (2), which he believes is inapplicable. However, as I understand it, the corresponding language of the model statute refers to the "the funds required under this section." The section referred to is the entire subsection 2, beginning at page 4, line 13 of the proposed substitute. So Laura's recommendation is correct insofar as the proposed substitute is intended to mirror the model statute. I see no reason why it should not in this regard, so it appears that Laura's recommendation should be followed.

this subsection

oh, but clear

Page 6, line 4: For the reasons stated immediately above, "subd. 1" should be "sub. 2".

Page 6, line 4: I agree that "do all of the following" should be deleted. It is not necessary and is in fact misleading, since a tobacco product manufacturer that fails to place the required funds into escrow will not automatically be subject to all the penalties set forth in the three subsections.

oh, but clear

Page 6, line 6 and line 12: For the same reasons as pertain to page 6, line 3, I think "paragraph" should be "subsection" in both cases, since that mirrors the use of the term "section" in the model statute.

Page 6, line 7 and line 13: I think "this paragraph" is correct in both cases, since it mirrors the use of "this subsection" in the model statute.

Page 6, line 20: I think "subd. 1" should be "subsection" so that it mirrors the use of the term "section" in the model statute.

this only under

Page 7, line 6 and line 12: I agree with Bob's explanation as to why the addition of "as it may be amended from time to time" is a bad idea.

Memo

To: Steve Miller

From: Bob Nelson

Subject: SSA to SB 122 Tobacco "even playing field" bill

Date: 8/25/99

Attached is a copy of the memo I sent to Senator's Robson and Rosenzweig, AAG Ed Hughes and Laura Rose of the Legislative Council regarding comments made on the proposed substitute amendment to SB 122 by an attorney representing the tobacco industry and by Laura Rose. Debora helped draft those comments. Ed Hughes prepared comments to my comments, and a copy of that memo is attached. I have also attached a copy of the comments from the tobacco attorney, which were made on the proposed substitute amendment and from Laura Rose.

You may become involved in this discussion because Sen. Robson is having a hearing on the bill on 9/9 and wants the substitute amendment ready by that date for executive action. Gene, from Sen. Rosenzweig office, came down to tell me that yesterday and asked about our response to Ed Hughes' response to our memo. I suggested that his response showed why he was a litigator and we were drafters.

The bottom line is that you may be asked to decide the bureau's position on some of these drafting questions. Do we do as the AG's office suggests, or convince Robson that our proposed language should be in the substitute amendment? Is this a management question for you to answer alone or to answer with the advice of your team managers?

cc. Debora Kennedy

9/22 2pm

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

Based on
with AG, AAG,
Sen. Rob. ...
Sen. DAK, ...
SM, Ed ...
using PG's ...

reger cat

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

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

INSERT
1-3

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

4 **895.10 Tobacco product agreement.** (1) **DEFINITIONS.** In this section:

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

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

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

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

6 a. Any roll of tobacco wrapped in paper or in any substance not containing
7 tobacco.

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

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

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

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

20 (e) "Master settlement agreement" means the settlement agreement and
21 related documents entered into on November 23, 1998, by this state and the leading
22 U.S. tobacco product manufacturers and attached to the consent decree, signed by

23 this state in the case, State of Wisconsin v. Phillip Morris, Inc., et al., Case No.
24 97-CV-328 Dane County Circuit Court, dated December 4, 1998.

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} requires that the
 4 financial institution hold the escrowed funds' principal for the benefit of releasing
 5 parties and prohibits the tobacco product manufacturer placing the ~~money~~ ^{funds} into
 6 escrow from using, accessing or directing the use of the funds' principal except as is
 7 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, ~~meets any of the following criteria:~~ ^{anywhere, which}

15 a. Manufactures ~~anywhere~~ ^{anywhere} cigarettes ~~that~~ the manufacturer intends to be sold
 16 in the United States, including cigarettes intended to be sold in the United States
 17 through an importer, except ~~if the~~ ^{that} importer is an original participating
 18 manufacturer, as defined in the master settlement agreement, that will be
 19 responsible for the payments under the master settlement agreement with respect
 20 to those cigarettes as a result of the provisions of subsection II (mm) of the master
 21 settlement agreement and that pays the taxes specified in subsection II (z) of the
 22 master settlement agreement, and ~~if~~ the manufacturer of those cigarettes does not
 23 market or advertise those cigarettes in the United States ^{change period to semi-colon}

"tobacco product manufacturer" does not include
 that an entity that manufactures cigarettes that
 it intends to be sold in the United States if those
 cigarettes are sold in the United States exclusively through
 an

*

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

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

5 2. "Tobacco product manufacturer" does not include an affiliate of a tobacco
6 product manufacturer unless the affiliate ^{itself falls within} meets subd. 1. a., b. or c.

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

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

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

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

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

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

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

2006

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

2 c. For ~~2007 and~~ each year ~~thereafter~~: \$.0188482 per unit sold.

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

4 1. shall receive the interest or other appreciation on that money as earned. ~~The~~

5 ~~The~~ money ^{placed into escrow} shall be released from escrow only under ~~one~~ of the following circumstances:

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

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

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

23 3. Each tobacco product manufacturer that elects to place money into escrow
24 under subd. 1. shall annually certify to the attorney general by ^{each} April 15 that the
25 tobacco product manufacturer is in compliance with subd. 1. The attorney general

S
Y
and 2.

1 may bring a civil action on behalf of the state against any tobacco product
 2 manufacturer that fails to place into escrow the moneys required under this
 3 ~~paragraph~~ ^{subsection}. Any tobacco product manufacturer that fails in any year to place into
 4 escrow the money required under subd. 1. shall ~~do all of the following~~:

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

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

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

20 4. Each failure to make ^{an} ~~the~~ annual deposit required under ~~subd. 1~~ ^{this subsection} shall
 21 constitute a separate violation.

Insert
6/22

22 ~~(b)~~ PROMULGATION OF RULES. The department of revenue shall promulgate the
 23 rules necessary to ascertain the amount of Wisconsin excise tax paid on the cigarettes
 24 of each tobacco product manufacturer for each year.

Insert
25

SECTION 2. Nonstatutory provisions.

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

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

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

14 (a) Using the procedure under section 227.24 of the statutes, the department
15 of revenue shall submit in proposed form the rules required under section 895.10 (3)
16 of the statutes, as created by this act, to the legislative council under section 227.15
17 (1) of the statutes no later than the first day of the 4th month beginning after the
18 effective date of this paragraph.

19 (b) Using the procedure under section 227.24 of the statutes, the department
20 of revenue may promulgate rules required under section 895.10 (3) of the statutes,
21 as created by this act, for the period before the effective date of the rules submitted
22 under paragraph (a), but not to exceed the period authorized under section 227.24
23 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)
24 of the statutes, the department is not required to provide evidence that promulgating
25 a rule under this paragraph as an emergency rule is necessary for the preservation

1 of the public peace, health, safety or welfare and is not required to provide a finding
2 of emergency for a rule promulgated under this paragraph.

3 (END)

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(15) Awards of costs and attorney fees.

1 insert 6-21
2 (3) If the attorney general is the prevailing party in an action under this section,
3 the court shall award the attorney general costs and, notwithstanding s. 814.04 (1),
4 reasonable attorney fees.

5 ~~insert 6-21~~ INSERT 1-3
6 SECTION 1. 814.04 (intro.) of the statutes is amended to read:
7 814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m),
8 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.10
9 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and
10 943.51 (2) (b), when allowed, costs shall be as follows:

NOTE: NOTE: Section 814.04 (intro.) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2). NOTE:
History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 383, 781, 780 (1973); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979
c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254;
s. 13.93 (2) (c).

(END OF INSERT)