

1999 DRAFTING REQUEST

Senate Amendment (SA-SA1-SSA1-SB122)

Received: 03/07/2000

Received By: nelsorp1

Wanted: Soon

Identical to LRB:

For: Peggy Rosenzweig (608) 266-2512

By/Representing: Gene

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:

Tobacco settlement

Instructions:

Reference on line 6 should be paragraph

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 03/07/2000	gilfokm 03/07/2000	jfrantze 03/08/2000	_____	lrb_docadmin 03/08/2000	lrb_docadmin 03/08/2000	
	nelsorp1 03/07/2000	gilfokm 03/07/2000		_____			
/2	nelsorp1 03/08/2000	gilfokm 03/08/2000	martykr 03/08/2000	_____	lrb_docadmin 03/08/2000	lrb_docadmin 03/08/2000	

FE Sent For:

<END>

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	nelsorp1 03/07/2000	gilfokm 03/07/2000		_____			

12-3-8-2000 *kmq* *3/8*
kmq *3/8*
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/1	nelsorp1	1-3-9-2000 kmj	6/8	6/8 3/8			

FE Sent For:

<END>

**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE****JAMES E. DOYLE
ATTORNEY GENERAL****Burnetta L. Bridge
Deputy Attorney General****123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857****Edwin J. Hughes
Assistant Attorney General
hughesej@doj.state.wi.us
608/264-9487
FAX 608/267-2778
TTY 608/267-8902****FACSIMILE TRANSMISSION**

DATE: March 6, 2000

TO: David Austin, Sen. Robson's Office
Gene Schaeffer, Sen. Rosenzweig's Office
Bob Nelson, LRB
Laura Rose, Leg. Council

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

RE: 1999 Senate Bill 122

7-5171
7-0367
4-8522
6-3830**No. of Pages (including cover sheet): 2**

I enclose a fax I received today from the attorney for the tobacco companies I have been dealing with on this bill.

Bob -- Could you take a look at the references the memo inquires about and let me know if they in fact mean what the memo indicates? I don't think I have the expertise myself to answer these questions.

Once we have the answers on the references, I will seek confirmation that if the bill is amended in the three ways the memo recommends, it will be considered a model statute for purposes of the tobacco companies.

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

COVINGTON & BURLING

March 5, 2000

MEMORANDUM TO ED HUGHES

As you requested, I have reviewed SSA 1 to SB 122 and SA 1, which you faxed to me on March 1, as well as the final version of SA 1, which was faxed to me on March 2. I learned of the March 2 hearing on SB 122 late in the day on March 1.

As I mentioned to you before the hearing, we believe it is important to amend 895.10(4) (page 7, lines 6-8) to conform the direction regarding rulemaking under that provision to the direction regarding rulemaking under the corresponding provision of the Model Statute. To implement this change, I suggested that 895.10(4) be amended by inserting, before "for" on page 7, line 8, the phrase "that elects to place funds into escrow pursuant to this subsection" (referring to 895.10(2)). I was alerted to the need to make this change by DOR's cost estimate, as reported in Mr. Lang's memorandum of March 2, which assumes a direction to calculate the amount of excise tax paid on the cigarettes of all manufacturers—not just the cigarettes of manufacturers placing funds in escrow. We hope there will be another opportunity to make this change.

On a more technical note, on page 1, line 12, please delete "an", and on page 3, line 22, "chapter" should be changed to whatever the appropriate reference is to 895.10(1)(i). In addition, please confirm the following regarding internal cross-references:

Page 6, line 5, please confirm that "subd. 1" corresponds to 895.10(2)(b)(1).

Page 6, line 9, please confirm that "subsection" refers to 895.10(2).

Page 6, line 12, please confirm that "subsection" refers to 895.10(2).

Page 6, line 13, please confirm that "paragraph" refers to 895.10(2)(b).

Page 6, line 18, please confirm that "subsection" refers to 895.10(2).

Page 6, line 19, please confirm that "paragraph" refers to 895.10(2)(b).

Page 7, line 1, please confirm that "subsection" refers to 895.10(2).

I look forward to hearing from you.

David H. Remes

No "Chapter" anywhere - ??
SA1
SSA1

But - this does not follow to MS either

1. yes

yes

yes

yes

yes

yes

yes



3/8
State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1686/1

RPN...:.....
KMG

D-Note

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

ca 1879

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

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

frz 3) (No B) "lg. Page 1, line 11: delete "formula" and substitute "formulas".

frz 4) (No B) "lm. Page 1, line 12: delete "an inflation adjustment" and substitute "inflation adjustments".)".

6 ✓ 2. Page 1, line 2: delete "1" and substitute "1s".

7 ✓ 3. Page 1, line 6: delete "chapter" and substitute "paragraph".

8 ✓ 4. Page 7, line 7: after that line insert:

frz 9) (No B) (11m) "lm. Page 7, line 8: after "manufacturer" insert "that elects to place funds into escrow under this section".".

11

(END)

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

LRBa1686/1dn

RPN...:/::...

img

I have reviewed the internal cross-references as requested and confirm that those cross-references are to those listed in the memo from Covington and Burling.

I did not make the simple change of removing "an" from page 1, line 12, of the substitute amendment as suggested because it is not grammatically correct and it does not conform to the model legislation. Instead, I added the model legislation language: $\Delta\Delta$ "formulas for inflation adjustments".

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

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

LRBa1686/1dn
RPN:kmg:jf

March 8, 2000

I have reviewed the internal cross references as requested and confirm that those cross-references are to those listed in the memo from Covington and Burling.

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**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**JAMES E. DOYLE
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**Burnetta L. Bridge
Deputy Attorney General**

**123 West Washington Avenue
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**Edwin J. Hughes
Assistant Attorney General
hughesej@doj.state.wi.us
608/264-9487
FAX 608/267-2778
TTY 608/267-8902**

FACSIMILE TRANSMISSION

DATE: March 8, 2000

TO: David Austin, Sen. Robson's Office
Gene Schaeffer, Sen. Rosenzweig's Office
Bob Nelson, LRB
Laura Rose, Leg. Council

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

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

RE: 1999 Senate Bill 122

No. of Pages (including cover sheet): 4

FYI, I enclose a letter I have faxed today to David Remes.

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



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

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Edwin J. Hughes
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TTY 608/267-8902

March 8, 2000

Mr. David H. Remes
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Re: Wisconsin 1999 Senate Bill 122

Dear Mr. Remes:

Thank you for your March 5 memorandum that sets forth further comments on 1999 Senate Bill 122, Wisconsin's proposed model non-participating manufacturers statute.

I enclose a proposed Senate Amendment, to Senate Amendment 1, to Senate Substitute Amendment 1, to 1999 Senate Bill 122, as well as a March 8 Drafter's Note from our Legislative Reference Bureau that respond to the concerns you have raised.

In the next day or so, the State Senate may schedule Senate Bill 122 for consideration next week. However, since this may be the last opportunity for this house to amend the legislation, members of the legislature seek assurance that, with this amendment, Senate Bill 122, will accomplish its goals. In particular, it is our understanding that, assuming adoption of the enclosed amendment and no other changes, Senate Bill 122 will constitute an acceptable version of the Model Statute set forth in Exhibit T of the Master Settlement Agreement (MSA), as modified for Wisconsin's particular procedural and technical requirements. I would appreciate your confirming that the MSA Participating Manufacturers do not dispute this understanding.

Thanks again for your helpful comments on this bill. I look forward to your response.

Sincerely,

Edwin J. Hughes
Assistant Attorney General

Enclosure

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

LRBa1686/1dn
RPN:kmgjff

March 8, 2000

I have reviewed the internal cross references as requested and confirm that those cross-references are to those listed in the memo from Covington and Burling.

I did not make the simple change of removing "an" from page 1, line 12 of the substitute amendment as suggested because it is not grammatically correct and it does not conform to the model legislation. Instead, I added the model legislation language: "formulas for inflation adjustments".

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

1999 - 2000 LEGISLATURE

LRBa1686/1
RPN:kmgjf

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

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

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

3 "1g. Page 1, line 11: delete "formula" and substitute "formulas".

4 "1m. Page 1, line 12: delete "an inflation adjustment" and substitute "inflation
5 adjustments".

6 2. Page 1, line 2: delete "1" and substitute "1s".

7 3. Page 1, line 6: delete "chapter" and substitute "paragraph".

8 4. Page 2, line 5: after that line insert:

9 "11m. Page 7, line 8: after "manufacturer" insert "that elects to place funds into
10 escrow under this section".

11

(END)



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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

RE: 1999 Senate Bill 122

No. of Pages (including cover sheet): 4

Here's the latest.

If you have trouble receiving this transmission, please contact:

Kathy Phone: 608-267-1930

COVINGTON & BURLING

March 8, 2000

MEMORANDUM TO ED HUGHES

We're getting close. I appreciate the response from Mr. Nelson regarding the cross-references. The proposed amendment to SA 1 looks good with one exception. Exhibit T defines "Adjusted for inflation" to mean "increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement." I am attaching a copy of the pertinent page from Exhibit T for your information. Please revise the proposed amendment so that it will conform SSA 1 to Exhibit T in this respect by deleting the "an" on line 12 of page 1.

Assuming this last change is made, the Original Participating Manufacturers would not dispute that SSA 1, if enacted without further modification or addition and not in conjunction with any other legislative or regulatory proposal, is a Model Statute within the meaning of the Master Settlement Agreement.

We appreciate your labors. I look forward to hearing from you.

David H. Remes

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)-(e) of this Act.

1999 - 2000 LEGISLATURE

LRB 1080/1
KPN:kmgr

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

At the locations indicated, amend the amendment as follows:

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1m. Page 1, line 12: delete "an inflation adjustment" and substitute "inflation
adjustments";

2. Page 1, line 2: delete "1" and substitute "1a".

3. Page 1, line 6: delete "chapter" and substitute "paragraph".

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

11m. Page 7, line 8: after "manufacturer" insert "that elects to place funds into
escrow under this section".

(END)



Today 3/8
State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1686/1 2
RPN:kmg:jf

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fix
component