

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB494)

Received: **09/16/2003**

Received By: **rnelson2**

Wanted: **Soon**

Identical to LRB:

For: **Justice 6-7656**

By/Representing: **Charlotte Gibson**

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

Drafter: **rnelson2**

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Subject: **Courts - miscellaneous**

Extra Copies: **Charlotte Gibson, DOJ**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Tobacco settlement adjustment

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>
/1	rnelson2 09/16/2003	wjackson 09/16/2003	jfrantze 09/17/2003	_____	lemery 09/17/2003	lemery 09/17/2003	

FE Sent For:

<END>

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*Call Jaugh Vance, 4-9863,
when this is ready for pickup*

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/1	rnelson2	1 Wlj 9/16	J 9/17	J/R 9/17			

FE Sent For:

<END>

FAX TRANSMITTAL MEMO

State of Wisconsin
Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
FAX 608/267-2223

To: Bob Nelson
LRB

Date: September 16, 2003

Fax Number: 264-6948

From:

Charlotte J. Gibson
Assistant Attorney General

No. of pages ~~2~~ 3
including cover sheet

Sender's phone number:
(608) 266-7656

Comments: See para. 2. I struck "this act shall be deemed repealed". That phrase contemplates the change to the allocable share provision as being made in a separate bill from complementary legislation. Since our bill puts together the allocable share and complementary legislation, we would not want to deem the entire act repealed based on the unconstitutionality of the one provision. I think the remaining language limits the restoration to section (b)(2)(B).

Thanks so much for your help.

1 Products Tax Law (Part 13 (commencing with Section 30001) of
 2 Division 2 of the Revenue and Taxation Code), shall be allocated
 3 in the same manner as those revenues and expenses are allocated
 4 under the Cigarette and Tobacco Products Tax Law as that law read
 5 on the effective date of this act.

6 ~~SEC. 21.~~

7 **SEC. 23.** The provisions of this act are severable. If any
 8 provision of this act or its application is held invalid, that invalidity
 9 does not affect other provisions or applications that can be given
 10 effect without the invalid provision or application.

11 ~~SEC. 22.~~

12 **SEC. 24.** *If the amendments to paragraph (2) of subdivision*
 13 *(b) of Section 104557 of the Health and Safety Code made by*
 14 *Section 3 of this act are held by a court of competent jurisdiction*
 15 *to be unconstitutional, Section 3 of this act shall be deemed*
 16 *repealed, and paragraph (2) of subdivision (b) of Section 104557*
 17 *of the Health and Safety Code shall be deemed to be in the form*
 18 *as it existed prior to the amendments made to that section by*
 19 *Section 3 of this act. Neither a holding of unconstitutionality of the*
 20 *provisions of Section 3 of this act, nor an implied repeal of the*
 21 *amendments to paragraph (2) of subdivision (b) of Section 104557*
 22 *of the Health and Safety Code made by Section 3 of this act shall*
 23 *affect, impair, or invalidate any other portion of Section 104557*
 24 *of the Health and Safety Code, or the application of that section*
 25 *to any other person or circumstance, and those remaining portions*
 26 *of Section 104557 of the Health and Safety Code shall at all times*
 27 *continue in full force and effect.*

*here is the language
 California used*

28 **SEC. 25.** No reimbursement is required by this act pursuant
 29 to Section 6 of Article XIII B of the California Constitution
 30 because the only costs that may be incurred by a local agency or
 31 school district will be incurred because this act creates a new crime
 32 or infraction, eliminates a crime or infraction, or changes the
 33 penalty for a crime or infraction, within the meaning of Section
 34 17556 of the Government Code, or changes the definition of a
 35 crime within the meaning of Section 6 of Article XIII B of the
 36 California Constitution.

37 ~~SEC. 23.~~

38 **SEC. 26.** This act is an urgency statute necessary for the
 39 immediate preservation of the public peace, health, or safety
 40 within the meaning of Article IV of the California Constitution and

**TEXT OF ALLOCABLE SHARE AMENDMENT
TO MODEL STATUTE**

1. Subparagraph B of paragraph 2 of subdivision b of section XXX is amended to read as follows:

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State 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(1)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(1)(3) of that Agreement other than the Inflation Adjustment) the Master Settlement Agreement payments, as determined pursuant to section IX(1) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer. Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

§ 2. Severability Clause.

If this act, or any portion of the amendment to subparagraph b of paragraph 2 of subdivision b of section XXX made by this act, is held by a court of competent jurisdiction to be unconstitutional, then such subparagraph b shall be deemed to be repealed in its entirety. If paragraph 2 of subdivision b of section XXX shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then ~~this act shall be deemed repealed, and~~ subparagraph b of paragraph 2 of subdivision b of section xxx be restored as if no such amendments had been made. Neither any holding of unconstitutionality nor the repeal of subparagraph b of paragraph 2 of subdivision b of section XXX shall affect, impair or invalidate any other portion of section XXX, or the application of such section to any other person or circumstance, and such remaining portions of section xxx shall at all times continue in full force and effect.

6-1656



Wed 10 an
State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa0951/1
RPN: /:....
Wlj

ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL 494

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

2 1. Page 13, line 7: after that line insert:

3 SECTION 3. Nonstatutory provisions.

as affected by this act

4 (1) ~~If a court finds section 895.10 (2) (b) 2. b. of the statutes, or any part of section~~

5 ~~895.10 (2) (b) 2. b. of the statutes, as affected by this act,~~ is unconstitutional, ~~that~~ the

6 treatment of section 895.10 (2) (b) 2. b. of the statutes by this act is void. ¹¹ 0

7 (END)

Notwithstanding section 990.001 (11) of the statutes,
if a court finds that all or any part of

Emery, Lynn

From: Emery, Lynn
Sent: Wednesday, September 17, 2003 9:08 AM
To: Gibson, Charlotte J.
Subject: LRB 03a0951 Topic: Tobacco settlement adjustment



03a0951/1

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