

MAINE STATE LEGISLATURE

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R.S.

L.D. 943

DATE: 5-5-99

(Filing No. H-448)

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APPROPRIATIONS AND FINANCIAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 687, L.D. 943, Bill, "An Act to Implement the Tobacco Settlement"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Tobacco Manufacturers'

Further amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Attorney General has negotiated and settled Maine's legal claims against the major national tobacco manufacturers; and

Whereas, Maine, along with 45 other states, 5 territories and the District of Columbia, entered into a master settlement agreement with those tobacco manufacturers; and

Whereas, the master settlement agreement contained a model statute for adoption by the states; and

COMMITTEE AMENDMENT

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Whereas, it is in Maine's best interest to have the statute proffered in this legislation enacted into law at the earliest opportunity; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'PART A

Sec. A-1. 22 MRSA c. 263, sub-c. III is enacted to read:

SUBCHAPTER III

TOBACCO MANUFACTURERS ACT

§1580-G. Findings and purpose.

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.

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.

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.

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.

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2 On November 23, 1998, leading United States tobacco product
3 manufacturers entered into a settlement agreement, entitled the
4 "Master Settlement Agreement," with the State. The Master
5 Settlement Agreement obligates these manufacturers, in return for
6 a release of past, present and certain future claims against them
7 as described therein, to pay substantial sums to the State (tied
8 in part to their volume of sales); to fund a national foundation
9 devoted to the interest of public health; and to make substantial
10 changes in their advertising and marketing practices and
11 corporate culture, with the intention of reducing underage
12 smoking.

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

24 **§1580-H. Definitions.**

25 1. "Adjusted for inflation" means increased in accordance
26 with the formula for inflation adjustment set forth in Exhibit C
27 to the Master Settlement Agreement.

28 2. "Affiliate" means a person who directly or indirectly
29 owns or controls, is owned or controlled by, or is under common
30 ownership or control with, another person. Solely for purposes
31 of this definition, the terms "owns," "is owned" and "ownership"
32 mean ownership of an equity interest, or the equivalent thereof,
33 of ten percent or more, and the term "person" means an
34 individual, partnership, committee, association, corporation or
35 any other organization or group of persons.

36 3. "Allocable share" means allocable share as that term is
37 defined in the Master Settlement Agreement.

38 4. "Cigarette" means any product that contains nicotine, is
39 intended to be burned or heated under ordinary conditions of use,
40 and consists of or contains

41 A. any roll of tobacco wrapped in paper or in any substance
42 not containing tobacco; or

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2 B. tobacco, in any form, that is functional in the product,
3 which, because of its appearance, the type of tobacco used
4 in the filler, or its packaging and labeling, is likely to
5 be offered to, or purchased by, consumers as a cigarette; or

6 C. any roll of tobacco wrapped in any substance containing
7 tobacco which, because of its appearance, the type of
8 tobacco used in the filler, or its packaging and labeling,
9 is likely to be offered to, or purchased by, consumers as a
10 cigarette described in paragraph A of this definition. The
11 term "cigarette" includes "roll-your-own" (i.e., any tobacco
12 which, because of its appearance, type, packaging, or
13 labeling is suitable for use and likely to be offered to, or
14 purchased by, consumers as tobacco for making cigarettes).
15 For purposes of this definition of "cigarette," 0.09 ounces
16 of "roll-your-own" tobacco shall constitute one individual
17 "cigarette."

18
19 5. "Master Settlement Agreement" means the settlement
20 agreement (and related documents) entered into on November 23,
21 1998 by the State and the leading United States tobacco product
22 manufacturers, approved by the Superior Court on December 3,
23 1998, in State of Maine v. Philip Morris, et al., Kennebec County
24 Superior Court, Docket No. CV-97-134.

25 6. "Qualified escrow fund" means an escrow arrangement with
26 a federally or State chartered financial institution having no
27 affiliation with any tobacco product manufacturer and having
28 assets of at least \$1,000,000,000 where such arrangement requires
29 that such financial institution hold the escrowed funds'
30 principal for the benefit of releasing parties and prohibits the
31 tobacco product manufacturer placing the funds into escrow from
32 using, accessing or directing the use of the funds' principal
33 except as consistent with section 1580-I, subsection 2, paragraph
34 A of this Act.

35 7. "Released claims" means Released Claims as that term is
36 defined in the Master Settlement Agreement.

37 8. "Releasing parties" means releasing parties as that term
38 is defined in the Master Settlement Agreement.

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

42
43 A. manufactures cigarettes anywhere that such manufacturer
44 intends to be sold in the United States, including
45 cigarettes intended to be sold in the United States through
46 an importer (except where such importer is an original
47 importer).

2 participating manufacturer (as that term is defined in the
3 Master Settlement Agreement) that will be responsible for
4 the payments under the Master Settlement Agreement with
5 respect to such cigarettes as a result of the provisions of
6 subsection II(mm) of the Master Settlement Agreement and
7 that pays the taxes specified in subsection II(z) of the
8 Master Settlement Agreement, and provided that the
9 manufacturer of such cigarettes does not market or advertise
10 such cigarettes in the United States);

11 B. is the first purchaser anywhere for the resale in the
12 United States of cigarettes manufactured anywhere that the
13 manufacturer does not intend to be sold in the United
14 States; or

15 C. becomes a successor of an entity described in paragraph
16 A or B.

17 The term "tobacco product manufacturer" shall not include an
18 affiliate of a tobacco product manufacturer unless such affiliate
19 itself falls within any of paragraphs A to C above.

20 10. "Units sold" means the number of individual cigarettes
21 sold in the State by the applicable tobacco product manufacturer
22 (whether directly or through a distributor, retailer or similar
23 intermediary of intermediaries) during the year in question, as
24 measured by excise taxes collected by the State on packs bearing
25 the excise tax stamp of the State or "roll-your-own" tobacco
26 containers. The Department of Administrative and Financial
27 Services, Bureau of Revenue Services, shall promulgate such rules
28 as are necessary to obtain information from any tobacco product
29 retailer, distributor or manufacturer, to ascertain the amount of
30 state excise tax paid on tobacco products of each tobacco product
31 manufacturer for each year. Rules established pursuant to this
32 section are routine technical rules, as provided in Title 5,
33 Chapter 375, subchapter II-A. Notwithstanding any other
34 provision of law, the Bureau of Revenue Services may provide
35 information obtained pursuant to this section as is necessary for
36 a tobacco product manufacturer to compile its escrow payment
37 hereunder. In addition, the Department of the Attorney General
38 shall have the authority to subpoena the records of any tobacco
39 product retailer, distributor, or manufacturer, to enforce this
40 Act.

41 **§1580-I. Requirements.**

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

2 1. Become a participating manufacturer (as that term is
3 defined in section II(jj) of the Master Settlement Agreement) and
4 generally perform its financial obligations under the Master
5 Settlement Agreement; or

6
7 2. place into a qualified escrow fund by April 15 of the
8 year following the year in question the following amounts (as
9 such amounts are adjusted for inflation) --

10 1999: \$.0094241 per unit sold after the date of enactment
11 of this Act.

12
13 2000: \$.0104712 per unit sold.

14
15 For each of 2001 and 2002: \$.0136125 per unit sold.

16
17 For each of 2003 through 2006: \$.0167539 per unit sold.

18
19 For each of 2007 and each year thereafter: \$.0188482 per
20 unit sold.

21
22 A. A tobacco product manufacturer that places funds into
23 escrow pursuant to this subsection shall receive the
24 interest or other appreciation on such funds as earned.
25 Such funds themselves shall be released from escrow only
26 under the following circumstances --

27
28 (1) to pay a judgment or settlement on any released
29 claim brought against such tobacco product manufacturer
30 by the State or any releasing party located or residing
31 in the State. Funds shall be released from escrow
32 under this subparagraph

33
34 (a) in the order in which they were placed into
35 escrow and

36
37 (b) only to the extent and at the time necessary
38 to make payments required under such judgment or
39 settlement;

40
41 (2) to the extent that a tobacco product manufacturer
42 establishes that the amount it was required to place
43 into escrow in a particular year was greater than the
44 State's allocable share of the total payments that such
45 manufacturer would have been required to make in that
46 year under the Master Settlement Agreement (as
47 determined pursuant to section IX(i)(2) of the Master
48 Settlement Agreement, and before any of the adjustments
49 or offsets described in section IX(i)(3) of that
50

2 Agreement other than the Inflation Adjustment) had it
3 been a participating manufacturer, the excess shall be
4 released from escrow and revert back to such tobacco
5 product manufacturer; or

6 (3) to the extent not released from escrow under
7 subparagraph (1) or (2), funds shall be released from
8 escrow and revert back to such tobacco product
9 manufacturer twenty-five years after the date on which
10 they were placed into escrow.

11 B. Each tobacco product manufacturer that elects to place
12 funds into escrow pursuant to this subsection shall annually
13 certify to the Attorney General that it is in compliance
14 with this subsection. The Attorney General may bring a
15 civil action on behalf of the State against any tobacco
16 product manufacturer that fails to place into escrow the
17 funds required under this section. Any tobacco product
18 manufacturer that fails in any year to place into escrow the
19 funds required under this section shall --

20
21 (1) be required within 15 days to place such funds
22 into escrow as shall bring it into compliance with this
23 section. The court, upon a finding of a violation of
24 this subsection, may impose a civil penalty in an
25 amount not to exceed 5 percent of the amount improperly
26 withheld from escrow per day of the violation and in a
27 total amount not to exceed 100 percent of the original
28 amount improperly withheld from escrow;

29
30 (2) in the case of a knowing violation, be required
31 within 15 days to place such funds into escrow as shall
32 bring it into compliance with this section. The court,
33 upon a finding of a knowing violation of this
34 subsection, may impose a civil penalty in an amount not
35 to exceed 15 percent of the amount improperly withheld
36 from escrow per day of the violation and in a total
37 amount not to exceed 300 percent of the original amount
38 improperly withheld from escrow;

39
40 (3) in the case of a second knowing violation, be
41 prohibited from selling cigarettes to consumers within
42 the State (whether directly or through a distributor,
43 retailer or similar intermediary) for a period not to
44 exceed 2 years.

45 Each failure to make an annual deposit required under this
46 section shall constitute a separate violation. In addition to
47 the amounts set forth above, the State's costs and attorney's
48 fees shall be paid by the violator.
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2 **Sec. A-2. Legislative intent.** The numbering and statutory unit
4 designations of the Model Statute contained in the Master
6 Settlement Agreement entered into by leading United States
8 tobacco product manufacturers and the State on November 23, 1998
10 have been changed in this Part to conform to Maine statutory
 conventions. These changes are technical in nature and it is the
 intent of the Legislature that this Part be interpreted as
 substantively the same as corresponding portions of the Model
 Statute.

12 **Sec. A-3. Appropriation.** The following funds are appropriated
14 from the General Fund to carry out the purposes of this Part.

	1999-00	2000-01
16 ATTORNEY GENERAL,		
18 DEPARTMENT OF THE		
20 Administration - Attorney General		
22 Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$23,870	\$35,875
24 All Other	4,880	2,320

26 Provides funds for one
28 Research Assistant position
 and related expenses to
30 enforce escrow payments
 required by nonparticipating
 manufacturers.

32 If the Legislature
34 establishes a fund to receive
36 money due the State from the
 November 23, 1998 tobacco
38 settlement that was agreed to
 by the states and the tobacco
40 industry, it is the intent of
 the Legislature that the 2nd
42 expenditure from that fund,
 following the requirements of
44 Public Law 1999, chapter 16,
 Part B, section 1, is to
46 reimburse the General Fund
 for this appropriation.

48 **DEPARTMENT OF THE**
 ATTORNEY GENERAL

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TOTAL \$28,750 \$38,195'

PART B

Sec. B-1. Tobacco Settlement Fund established. The Tobacco Settlement Fund, referred to in this Part as the "fund," is established.

Sec. B-2. Tobacco suit award or settlement. Any award or settlement amount received by the State from a tobacco company pursuant to any action brought by the State against cigarette manufacturers or any other funds received as a result of any action involving the tobacco industry must be deposited into the Tobacco Settlement Fund, an Other Special Revenue program.

Sec. B-3. Nonlapsing fund. Any unexpended balance in the fund may not lapse, but must be carried forward to be used pursuant to this Part.

Sec. B-4. Investment of funds. The money in the fund may be invested as provided by law with earnings credited to the fund.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

Table with 3 columns: Description, 1999-00, 2000-01. Row 1: APPROPRIATIONS/ALLOCATIONS. Row 2: General Fund \$28,750 \$38,195

This bill is the model legislation contained in the master settlement agreement of the November 1998 "tobacco settlement." The State of Maine will be required to enforce payments by the nonparticipating tobacco product manufacturers into escrow. The amounts are based on units sold by that manufacturer. This bill is designed to protect prospective "tobacco settlement" funds designated for Maine from downward adjustment and redistribution to other participating states that enact this model legislation.

This bill includes General Fund appropriations of \$28,750 and \$38,195 in fiscal years 1999-00 and 2000-01, respectively, for the Department of the Attorney General for a Research

Assistant position and general operating expenses to enforce the escrow payments by nonparticipating manufacturers.

The Bureau of Revenue Services will incur some minor additional costs to adopt rules. These costs can be absorbed within the bureau's existing budgeted resources.

This bill may increase the number of civil suits and civil violations filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees and fines may also increase General Fund revenue by minor amounts.

Dedicating all money received by the State from the tobacco settlement and the interest earned on the balance, as proposed in Part B, will decrease unbudgeted General Fund revenue. The amounts to be received by the State in fiscal year 1999-00 and fiscal year 2000-01 can not be determined at this time. Expenditures from the fund will require allocations by the Legislature in the future.

The Treasurer of State will incur some minor additional costs to administer the cash pool distributions for the Tobacco Settlement Fund. These costs can be absorbed within the Treasurer of State's existing budgeted resources.'

SUMMARY

This amendment replaces the bill.

Cigarette smoking presents a serious public health concern to Maine and its citizens. In addition, cigarette smoking also presents serious financial concerns for Maine. Maine and its citizens pay millions of dollars each year in medical costs to treat smoking-related illnesses.

In the past months, the Attorney General has negotiated and settled Maine's legal claims against the major national tobacco manufacturers. In consummation of that settlement, Maine, together with 45 other states, 5 territories and the District of Columbia, entered into a Master Settlement Agreement (MSA) with those national tobacco manufacturers, participating manufacturers.

The MSA contains economic provisions that obligate the participating manufacturers to pay Maine a portion of the State's cost associated with the tobacco companies' misrepresentations and distributions of cigarettes in Maine. In addition, the

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2 participating manufacturers have agreed to certain noneconomic
3 terms that restrict their advertising and marketing practices and
4 control their corporate behavior.

6 Although the MSA made great strides in ensuring the
7 accountability of the tobacco manufacturers, if Maine is to
8 ensure the long-term public health and financial gains in the
9 MSA, it is critical that all manufacturers of cigarettes marketed
10 in Maine be made accountable for the potential costs associated
11 with their Maine cigarette sales.

12 Except for a few minor procedural changes, Part A is
13 identical to the model statute provided in Exhibit T of the MSA.
14 The goal of this legislation is to provide assurance that all
15 companies that sell cigarettes in Maine, including those
16 companies that have not entered into the MSA, nonparticipating
17 manufacturers, are financially capable of fulfilling their
18 economic obligations, if any, to Maine and its citizens.

20 In addition, passage of this legislation will protect
21 Maine's annual payments from a potential dramatic
22 nonparticipating manufacturers adjustment. This legislation was
23 the subject of extensive and difficult negotiations, including
24 discussions on whether the legislation would survive legal
25 challenges. The legislation was reviewed by a number of
26 antitrust and constitutional law experts who opined that this
27 legislation would survive legal challenge.

28 Part B creates the Tobacco Settlement Fund to receive any
29 award or settlement amount due the State from a tobacco company
30 pursuant to any action brought against cigarette manufacturers.
31 The fund would also receive any other funds due the State as a
32 result of any action involving the tobacco industry.

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