

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 943

H.P. 687

House of Representatives, February 3, 1999

An Act to Implement the Tobacco Settlement.

Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TOWNSEND of Portland.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 22 MRSA c. 259-B is enacted to read:**

6 **CHAPTER 259-B**

8 **TOBACCO LIABILITY ACT**

10 **§1496. Purpose**

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

26 Cigarette smoking also presents serious financial concerns
28 for the State. Under certain health care programs, the State may
30 have a legal obligation to provide medical assistance to eligible
32 persons for health conditions associated with cigarette smoking,
34 and those persons may have a legal entitlement to receive such
36 medical assistance. Under these programs, the State pays
38 millions of dollars each year to provide medical assistance for
40 these persons for health conditions associated with cigarette
42 smoking.

44 1. State policy. It is the policy of the State that
46 financial burdens imposed on the State by cigarette smoking be
48 borne by tobacco product manufacturers rather than by the State
50 to the extent that such manufacturers either determine to enter
into a settlement with the State or are found culpable by the
courts. To accomplish this policy this chapter, which may be
known and cited as the "Tobacco Liability Act," is enacted.

2. Settlement agreement. On November 16, 1998 leading
United States tobacco product manufacturers entered into a
settlement agreement, referred to in this chapter as 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 in the master settlement agreement, to pay substantial
sums to the State, the amount of which will be determined in part
by the volume of their respective sales in the State; 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.

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

13 **§1497. Definitions**

14 1. Adjusted for inflation. "Adjusted for inflation" means
15 adjusted upward from the base amount by an inflation factor in
16 the manner specified in the master settlement agreement as
17 provided in rules adopted by the Department of Administrative and
18 Financial Services, Bureau of Revenue Services.

19 2. Affiliate. "Affiliate" means a person who directly or
20 indirectly owns or controls, is owned or controlled by, or is
21 under common ownership or control with, another person. Solely
22 for purposes of this definition, the terms "owns," "is owned" and
23 "ownership" mean ownership of an equity interest, or the
24 equivalent of equity interest, of 10% or more, and the term
25 "person" means an individual, partnership, committee,
26 association, corporation or any other organization or group of
27 persons.

28 3. Allocable share. "Allocable share" means the percentage
29 disclosed for the State pursuant to the master settlement
30 agreement prior to June 30, 1999, without regard to any
31 subsequent alteration or modification of the State's percentage
32 share agreed to by or among the states under the master
33 settlement agreement.

34 4. Cigarette. "Cigarette" means any product that contains
35 nicotine, is intended to be burned or heated under ordinary
36 conditions of use, and consists of or contains:

37 A. Any roll of tobacco wrapped in paper or in any substance
38 not containing tobacco;

39 B. Tobacco, in any form, that, because of its appearance,
40 the type of tobacco used in the filler, or its packaging and
41 labeling, is likely to be offered to or purchased by
42 consumers as a cigarette;

2 C. Any roll of tobacco wrapped in any substance containing
4 tobacco that, because of its appearance, the type of tobacco
6 used in the filler or its packaging and labeling is likely
8 to be offered to or purchased by consumers as a cigarette
10 described in paragraph A; or

12 D. Any tobacco that, because of its appearance, type,
14 packaging or labeling, is suitable for use and likely to be
16 offered to or purchased by consumers as tobacco for making
18 cigarettes, referred to in this chapter as "roll-your-own."
20 For purposes of this definition of "cigarette," 0.09 ounces
22 of roll-your-own tobacco constitutes one cigarette.

24 5. Master settlement agreement. "Master settlement
26 agreement" means the settlement agreement entered into on
28 November 16, 1998 by the State and leading United States tobacco
30 product manufacturers and related documents.

32 6. Original participating manufacturer. "Original
34 participating manufacturer" means any one or more of the
36 following or its respective successor:

38 A. Brown and Williamson Tobacco Corporation;

40 B. Lorillard Tobacco Company;

42 C. Philip Morris Incorporated; or

44 D. R. J. Reynolds Tobacco Company.

46 Except as expressly provided in the master settlement agreement,
48 original participating manufacturer status is permanent status.

50 7. Participating manufacturer. "Participating
52 manufacturer" means a tobacco product manufacturer that is or
54 becomes a signatory to the master settlement agreement, provided
56 that a tobacco product manufacturer that joins the master
58 settlement agreement after November 23, 1998 makes any payments
60 that would have been required in the intervening period had it
62 been a signatory as of November 23, 1998.

64 8. Qualified escrow fund. "Qualified escrow fund" means an
66 escrow arrangement with a federally or state-chartered financial
68 institution having no affiliation with any tobacco product
70 manufacturer and having assets of at least \$1,000,000,000 when
72 such arrangement requires that such financial institution hold
74 the principal of the escrowed funds for the benefit of releasing
76 parties and prohibits the tobacco product manufacturer placing
78 the funds into escrow from using, accessing or directing the use

2 of the principal of the funds except as consistent with section
3 1498, subsection 2.

4 **9. Released claims. "Released claims" means:**

6 A. For past conduct, acts or omissions, including any
7 damages arising later from that conduct, or those acts or
8 omissions, those claims directly or indirectly based on,
9 arising out of or in any way related in whole or in part to:

10 (1) The use, sale, distribution, manufacture,
11 development, advertising, marketing or health effects
12 of tobacco products;

13 (2) The exposure to tobacco products; or

14 (3) Research statements or warnings regarding tobacco
15 products; or

16 B. For future conduct, acts or omissions, only those
17 monetary claims directly or indirectly based on, arising out
18 of or in any way related to, in whole or in part, the use of
19 or exposure to tobacco products manufactured in the ordinary
20 course of business, including but not limited to any future
21 claims for reimbursement of health care costs allegedly
22 associated with the use of or exposure to tobacco products.

23 **10. Releasing parties. "Releasing parties" means the State**
24 and any of its past, present and future agents, officials acting
25 in their official capacities, legal representatives, agencies,
26 departments, commissions and divisions; any subdivisions,
27 counties, municipalities, public entities, public
28 instrumentalities and public educational institutions; any
29 persons or entities acting in any capacity seeking relief on
30 behalf of or generally applicable to the general public in the
31 State or the people of the State, as opposed to private or
32 individual relief for separate and distinct injuries; and any
33 entity seeking recovery of expenses related to health care, other
34 than premium or capitation payments for the benefit of present or
35 retired state employees, paid or reimbursed directly or
36 indirectly by the State.

37 **11. Tobacco product manufacturer. "Tobacco product**
38 manufacturer" means an entity that, after the effective date of
39 this Act, directly and not exclusively through any affiliate:

40 A. Manufactures in any location cigarettes that the
41 manufacturer intends to be sold in the United States,
42 including cigarettes intended to be sold in the United
43 States through an importer, except when that importer is an
44 entity that is a subsidiary of the manufacturer.

2 original participating manufacturer that will be responsible
3 for the payments under the master settlement agreement with
4 respect to those cigarettes as a result of the provisions of
5 subsection II(z) of the master settlement agreement, and
6 provided that the manufacturer of those cigarettes does not
7 market or advertise those cigarettes in the United States;

8 B. Is the first purchaser anywhere for resale in the United
9 States of cigarettes manufactured in any location that the
10 manufacturer does not intend to be sold in the United
11 States; or

12 C. Becomes a successor of an entity described in paragraph
13 A or B.

14 The term "tobacco product manufacturer" does not include an
15 affiliate of a tobacco product manufacturer unless the affiliate
16 falls within the provisions of paragraph A, B or C.

17 12. Units sold. "Units sold" means the number of
18 individual cigarettes sold in the State by the applicable tobacco
19 product manufacturer, whether directly or through a distributor,
20 retailer or similar intermediary, during the year in question, as
21 measured by excise taxes collected by the State on cigarette
22 packs or roll-your-own tobacco containers bearing the excise tax
23 stamp of the State.

24 **§1498. Requirements on tobacco product manufacturers**

25 A tobacco product manufacturer that sells cigarettes to
26 consumers within the State, whether directly or through a
27 distributor, retailer or similar intermediary or intermediaries,
28 after the effective date of this Act shall comply with the
29 requirements of this section.

30 **1. Master settlement agreement performance; escrow fund**
31 **performance. A tobacco product manufacturer shall:**

32 A. Become a participating manufacturer and perform its
33 financial obligations under the master settlement agreement;
34 or

35 B. Place into a qualified escrow fund by April 15th of the
36 year following the year in question the following amounts,
37 as adjusted for inflation by rule adopted by the Department
38 of Administrative and Financial Services, Bureau of Revenue
39 Services for each year following the year of enactment of
40 this Act;

2 (1) For 1999, \$.0094241 per unit sold after the
3 effective date of this Act;

4 (2) For 2000, \$.0104712 per unit sold;

6 (3) For 2001 and 2002, \$.0136125 per unit sold;

8 (4) For 2003 through 2006, \$.0167539 per unit sold; and

10 (5) For 2007 and each year thereafter, \$.0188482 per
11 unit sold.

12 2. Treatment of escrowed funds. A tobacco product
13 manufacturer that places funds into escrow pursuant to subsection
14 1, paragraph B receives the interest or other appreciation on
15 such funds as earned. The funds in escrow may be released from
16 escrow only under the provisions of this subsection.

17 A. The funds may be released to pay a judgment or
18 settlement on any released claim brought against the
19 depositing tobacco product manufacturer by the State or any
20 releasing party located or residing in the State. Funds
21 must be released from escrow under this paragraph:

22 (1) In the order in which they were placed into
23 escrow; and

24 (2) Only to the extent and at the time necessary to
25 make payments required under such judgment or
26 settlement.

27 B. To the extent that a depositing tobacco product
28 manufacturer establishes that the amount it placed into
29 escrow in a particular year was greater than the State's
30 allocable share of the total payments that the manufacturer
31 would have been required to make in that year under section
32 IX(i)(2) of the master settlement agreement, before any of
33 the adjustments or offsets described in section IX(i)(3) of
34 that agreement other than the inflation adjustment, if it
35 had been a participating manufacturer, the excess must be
36 released from escrow and reverts to such tobacco product
37 manufacturer.

38 C. To the extent not released from escrow under paragraph A
39 or B, funds must be released from escrow and revert to the
40 depositing tobacco product manufacturer 25 years after the
41 date of deposit.

2 3. Annual certification. Each tobacco manufacturer that
3 elects to place funds into escrow pursuant to this section shall
4 annually certify to the Attorney General that it is in compliance
5 with this section.

6 **§1499. Enforcement**

8 The Attorney General may bring a civil action on behalf of
9 the State against a tobacco product manufacturer that fails to
10 place into escrow the funds required under section 1498.

12 1. Escrow deposit. A tobacco manufacturer that fails in
13 any year to place into escrow the funds required under section
14 1498 commits a civil violation for which the court may impose a
15 civil penalty, payable to the General Fund, in an amount not to
16 exceed 5% of the amount improperly withheld from escrow per day
17 of the violation, not to exceed 100% of the original amount
18 improperly withheld from escrow. In addition, the court shall
19 require the tobacco manufacturer to place sufficient funds into
20 escrow to bring it into compliance with this chapter within 15
21 days of entry of the order by the court.

22 2. Knowing violations. If the court finds that the tobacco
23 manufacturer has knowingly failed to comply with section 1498,
24 the court may impose a civil penalty, payable to the General
25 Fund, in an amount not to exceed 15% of the amount improperly
26 withheld from escrow per day of the violation, not to exceed 300%
27 of the original amount improperly withheld from escrow.

30 3. Repeated knowing violations. If the court finds that
31 the tobacco manufacturer has been found in more than one action
32 under this subsection to have knowingly failed to comply with
33 section 1498, the court shall prohibit the tobacco manufacturer
34 from directly or indirectly selling cigarettes to consumers in
35 the State for a period of up to 2 years.

36 4. Separate civil violations. Each failure to make an
37 annual deposit required under section 1498 constitutes a separate
38 civil violation.

40 **§1500. Rulemaking**

42 The Department of Administrative and Financial Services,
43 Bureau of Revenue Services shall adopt rules necessary to
44 implement this chapter. The rules must include determination of
45 the inflation adjustment factor for each year and the state
46 excise tax paid on the cigarettes of each tobacco product
47 manufacturer. Rules adopted pursuant to this section are major
48 substantive rules as defined by Title 5, chapter 375, subchapter
49 II-A.

2

SUMMARY

4

6 This bill enacts the Tobacco Liability Act to require
8 tobacco manufacturers who do not participate in the master
10 settlement agreement arrived at between tobacco manufacturers and
12 46 states to participate in an escrow fund to be used to offset
future liabilities. The Department of the Attorney General is
responsible for enforcing the Act. Rulemaking is required of the
Department of Administrative and Financial Services, Bureau of
Revenue Services.