

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 943

H.P. 687

House of Representatives, February 3, 1999

### An Act to Implement the Tobacco Settlement.

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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.