

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1153

Introduced by

Finance and Taxation Committee

(At the request of the Attorney General)

1 A BILL for an Act to establish a reserve fund to assure a source of compensation for the
2 consequences of the sale of cigarettes within the state; to provide an effective date; to provide a
3 penalty; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. Definitions.**

- 6 1. "Adjusted for inflation" means increased in accordance with the formula for inflation
7 adjustment set forth in exhibit C to the master settlement agreement.
- 8 2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or
9 controlled by, or is under common ownership or control with, another person.
10 Solely for purposes of this definition, the terms "owns", "is owned", and
11 "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten
12 percent or more, and the term "person" means an individual, partnership,
13 committee, association, corporation, or any other organization or group of persons.
- 14 3. "Allocable share" means allocable share as that term is defined in the master
15 settlement agreement.
- 16 4. "Cigarette" means any product that contains nicotine, is intended to be burned or
17 heated under ordinary conditions of use, and consists of or contains:
- 18 a. Any roll of tobacco wrapped in paper or in any substance not containing
19 tobacco;
- 20 b. Tobacco, in any form, that is functional in the product, which, because of its
21 appearance, the type of tobacco used in the filler, or its packaging and
22 labeling, is likely to be offered to, or purchased by, consumers as a cigarette;
23 or

- 1 c. Any roll of tobacco wrapped in any substance containing tobacco which,
2 because of its appearance, the type of tobacco used in the filler, or its
3 packaging and labeling, is likely to be offered to, or purchased by, consumers
4 as a cigarette described in subdivision a.

5 The term "cigarette" includes "roll-your-own", any tobacco which, because of its
6 appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or
7 purchased by, consumers as tobacco for making cigarettes. For purposes of this
8 definition of "cigarette", 0.09 ounces [2.55 grams] of "roll-your-own" tobacco constitutes
9 one individual "cigarette".

10 5. "Master settlement agreement" means the settlement agreement and related
11 documents entered into on November 23, 1998, by the state and leading United
12 States tobacco product manufacturers.

13 6. "Qualified escrow fund" means an escrow arrangement with a federally or state
14 chartered financial institution having no affiliation with any tobacco product
15 manufacturer and having assets of at least one billion dollars if the arrangement
16 requires that the financial institution hold the escrowed fund's principal for the
17 benefit of releasing parties and prohibits the tobacco product manufacturer placing
18 the funds into escrow from using, accessing, or directing the use of the fund's
19 principal except as consistent with paragraphs b and c of subsection 2 of section 2
20 of this Act.

21 7. "Released claims" means released claims as that term is defined in the master
22 settlement agreement.

23 8. "Releasing parties" means releasing parties as that term is defined in the master
24 settlement agreement.

25 9. "Tobacco product manufacturer" means an entity that after the effective date of this
26 Act directly, and not exclusively through any affiliate:

- 27 a. Manufactures cigarettes anywhere that the manufacturer intends to be sold in
28 the United States, including cigarettes intended to be sold in the United States
29 through an importer, except if the importer is an original participating
30 manufacturer, as that term is defined in the master settlement agreement,
31 which will be responsible for the payments under the master settlement

1 agreement with respect to cigarettes as a result of the provisions of
2 subsection II(mm) of the master settlement agreement and which pays the
3 taxes specified in subsection II(z) of the master settlement agreement, and
4 provided that the manufacturer of the cigarettes does not market or advertise
5 the cigarettes in the United States;

6 b. Is the first purchaser anywhere for resale in the United States of cigarettes
7 manufactured anywhere which the manufacturer does not intend to be sold in
8 the United States; or

9 c. Becomes a successor of an entity described in subdivision a or b.

10 The term "tobacco product manufacturer" does not include an affiliate of a tobacco
11 product manufacturer unless the affiliate itself falls within the definition of tobacco
12 product manufacturer.

13 10. "Units sold" means the number of individual cigarettes sold in the state by the
14 applicable tobacco product manufacturer, whether directly or through a distributor,
15 retailer, or similar intermediary or intermediaries, during the year in question, as
16 measured by excise taxes collected by the state on packs, or "roll-your-own"
17 tobacco containers, bearing the excise tax stamp of the state. The state tax
18 commissioner shall adopt rules as are necessary to ascertain the amount of state
19 excise tax paid on the cigarettes of the tobacco product manufacturer for each
20 year.

21 **SECTION 2. Requirements.** A tobacco product manufacturer selling cigarettes to
22 consumers within the state, whether directly or through a distributor, retailer, or similar
23 intermediary or intermediaries, after the effective date of this Act, must:

24 1. Become a participating manufacturer, as that term is defined in section II(jj) of the
25 master settlement agreement, and generally perform its financial obligations under
26 the master settlement agreement; or

27 2. a. Place into a qualified escrow fund by April fifteenth of the year following the
28 year in question, the following amounts, as such amounts are adjusted for
29 inflation:

30 (1) 1999: \$.0094241 per unit sold after the effective date of this Act;

31 (2) 2000: \$.0104712 per unit sold;

- 1 (3) For each year 2001 and 2002: \$.0136125 per unit sold;
- 2 (4) For each year 2003 through 2006: \$.0167539 per unit sold; and
- 3 (5) For 2007 and each year thereafter: \$.0188482 per unit sold.
- 4 b. A tobacco product manufacturer that places funds into escrow pursuant to
- 5 subsection 1 is entitled to interest or other appreciation on the funds as
- 6 earned. The funds themselves must be released from escrow only under the
- 7 following circumstances:
- 8 (1) To pay a judgment or settlement on any released claim brought against
- 9 the tobacco product manufacturer by the state or any releasing party
- 10 located or residing in the state. Funds must be released from escrow
- 11 under this subdivision in the order in which they were placed into
- 12 escrow and only to the extent and at the time necessary to make
- 13 payments required under the judgment or settlement;
- 14 (2) To the extent that a tobacco product manufacturer establishes that the
- 15 amount it was required to place into escrow in a particular year was
- 16 greater than the state's allocable share of the total payments that the
- 17 manufacturer would have been required to make in that year under the
- 18 master settlement agreement, as determined pursuant to
- 19 section IX(i)(2) of the master settlement agreement, and before any of
- 20 the adjustments or offsets described in section IX(i)(3) of that
- 21 agreement other than the inflation adjustment, had it been a
- 22 participating manufacturer, the excess must be released from escrow
- 23 and revert back to the tobacco product manufacturer; or
- 24 (3) To the extent not released from escrow under subdivision 1 or 2, funds
- 25 must be released from escrow and revert back to the tobacco product
- 26 manufacturer twenty-five years after the date on which they were
- 27 placed into escrow.
- 28 c. Each tobacco product manufacturer that elects to place funds into escrow
- 29 pursuant to this subsection shall annually certify to the state tax commissioner
- 30 that it is in compliance with this subsection. The state tax commissioner shall
- 31 refer all instances of noncompliance to the attorney general. The attorney

1 general may bring a civil action on behalf of the state against any tobacco
2 product manufacturer that fails to place into escrow the funds required under
3 this section. Any tobacco product manufacturer that fails in any year to place
4 into escrow the funds required under this section shall:

5 (1) Be required within fifteen days to place the funds into escrow as will
6 bring it into compliance with this section. The court, upon a finding of a
7 violation of this subsection, may impose a civil penalty to be paid to the
8 general fund of the state in an amount not to exceed five percent of the
9 amount improperly withheld from escrow per day of the violation and in
10 a total amount not to exceed one hundred percent of the original
11 amount improperly withheld from escrow;

12 (2) In the case of a knowing violation, be required within fifteen days to
13 place the funds into escrow as will bring it into compliance with this
14 section. The court, upon a finding of a knowing violation of this
15 subsection, may impose a civil penalty to be paid to the general fund of
16 the state in an amount not to exceed fifteen percent of the amount
17 improperly withheld from escrow per day of the violation and in a total
18 amount not to exceed three hundred percent of the original amount
19 improperly withheld from escrow; and

20 (3) In the case of a second knowing violation, be prohibited from selling
21 cigarettes to consumers within the state, whether directly or through a
22 distributor, retailer or similar intermediary, for a period not to exceed
23 two years.

24 Each failure to make an annual deposit required under this section constitutes a separate
25 violation.

26 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.