

**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 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.